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OFFICE OF THE CLERK

No. 00-347

IN THE

Supreme Court of the United States

THE WHARF (HOLDINGS) LIMITED, a Hong Kong company; WHARF COMMUNICATIONS INVESTMENTS LIMITED, a Hong Kong company; and STEPHEN NG, a Hong Kong citizen,

Petitioners,

v.

UNITED INTERNATIONAL HOLDINGS, INC., a Delaware corporation; and UIH ASIA INVESTMENT CO., a Colorado general partnership,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JOINT APPENDIX

VOLUME IV OF V
APPENDIX DT

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APPENDIX DT

Excerpt from Cross-Examination of S. Ng
March 26, 1997 - March 28, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 7226-7670; Transcript 5048-5471)

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ambiguous, and because they were ambiguous, the documents were referred to the court of Hong Kong for interpretation. And in the end, we won the interpretation.

Q Thank you.

MR. JENTES: That's all the questions I have, Your Honor.

THE COURT: Thank you.

CROSS-EXAMINATION

BY MR. CHASE:

Q Good morning, Mr. Ng.

A Good morning.

Q You remember me?

A Yes, I do, Mr. Chase.

Q Mr. Ng, when I took your deposition almost two years ago and two years closer to the events of this case, you told the truth, did you not?

A I always tell the truth and I told the truth as far as I could recollect.

Q And before I took your deposition, Mr. Ng, you had several months notice that your deposition was going to be taken?

A I had notice, but I was in the middle of everything that I was doing.

Q You had notice, right?

A I had notice.

Q And you had lawyers, right?

A I had lawyers.

Q And you met with those lawyers, right?

A I met with lawyers, yes.

Q And they showed you a lot of documents, right?

A They showed me some documents.

Q And they prepared you for your deposition, right?

A I prepared for the deposition, yes.

Q And when I took your deposition, I showed you virtually every single document that Mr. Jentes has shown you over the past couple of days, didn't I?

A I disagree with that.

Q All right, we won't have to argue about that because I plan to walk through some of those documents, and we'll talk about the ones I put in front of you. And when I put them in front of

you, I gave you an opportunity to read those documents, didn't I?

A I had an opportunity to read the documents that were shown to me. I didn't have an opportunity to read the documents that were not.

Q Oh, are you telling us, Mr. Ng, that prior to your deposition your lawyers in preparing you for the deposition withheld things from you?

A No, I didn't see all the documents, I didn't have enough time to prepare for the--what do you call it?--deposition.

Q And now that you're here in Denver and you say you sat in this courtroom you've had this recollection of events that happened back in 1991, 2, 3 and 4, right?

A I have relived the experience of those years.

Q You've not only relived the experience but you've spent countless hours outside of this courtroom with your attorneys going over your testimony, haven't you?

A No, I have not.

Q You haven't?

A I have not spent countless hours.

Q Well, tell us how many.

A I really started to look at documents and talk to my attorneys Friday, last Friday, and then we spent some time over the weekend.

Q And you sat here through court, through all this testimony, and you're testifying now that you didn't talk to your lawyers about what was going on here in court and what your story was going to be?

A I'm sorry, the question is?

Q As you were in this court and as this case began unfolding, is it your testimony that you did not have regular communications? And I don't want to know what those are, because I'm not going to inquire about your communications, I just want to know whether you had communications with your attorneys over that period of time as to what your story was going to be when you came in here.

A Only when I am in Denver. When I'm not in Denver, no, there was no communication at all.

Q But when you're in Denver, it's regular?

A Well, I--I sit in this courtroom when I'm in Denver, but not regular.

Q Now, Mr. Ng, after your deposition was taken you received the transcript and had an opportunity to go through the entire thing, didn't you?

A I don't remember reading my deposition.

Q You had the opportunity--

A Or the transcript.

Q --to go through the entire deposition and make whatever corrections you thought necessary, didn't you?

A I—I don't know. I--if you say so, yes, but--

Q Now--

A --I don't know.

Q Now that deposition was video taped, right?

A Yes.

Q And you knew in advance it was going to be video taped?

A Yes.

Q And you prepared for it to be video taped?

A Prepared to be video taped meaning makeup and--

Q Not makeup, but your lawyers told you you were going to be on video tape and you were going to have to do certain things.

A Deposition.

Q In preparation for your testimony here today, have you had video tape sessions with your lawyers?

A No.

Q You haven't had any video tape session with your lawyers in this case?

A Absolutely none.

Q Have you had audio tape sessions?

A No.

Q Okay. Now, Mr. Ng, let me take you to March 18--we're going to work backwards a little bit here--March 18, not this year, 1994. Now you're talking about that meeting of March 18, 1994, and your directors met, and just so we know where we're talking about, I'm at the end of the chart here, right?

MR. CHASE: And for the jury, I think we've given you this time--human size copies of our chart. Mr. Gilmore's going to give you people size copies just in case anybody's having trouble seeing it.

Q (by Mr. Chase) Well, Mr. Ng, unfortunately, I don't have one for you. But I'll tell you what--

THE CLERK: Do you have one for His Honor, please?

MR. CHASE: No.

THE COURT: No? Okay.

Q (by Mr. Chase) But I'll tell you what, if I refer to this chart in any specificity, I'll ask you to come down so you can see it. But right now, right now we'll just have to live with the face that what I'm talking about is March 18, 1994. I'm at the end of the chart, you'll agree with that, won't you? You can see that?

A I can see the chart.

Q And March 18 is when you had this meeting?

A March 18, 1994, yes, we had a meeting of the directors.

Q And that's when your directors decided--oh, look at this

MR. JENTES: Excuse me, Mr. Chase, it turns out Mr. Munson has one of these big blow-ups; can I give that to the witness?

MR. CHASE: Whatever.

THE WITNESS: Thank you.

Q (by Mr. Chase) Now that we've supplied you with one, Mr. Ng, I'm not going to be referring to it other than to orient you to the fact that we're at the very end of the chart, okay?

A Okay.

Q Now, March 18, 1994 is when you have this meeting and your directors, the ones that were there at that meeting, decided at this time they see no need for a cable television partner, right?

A I testified earlier at this--at that time, the March 1994 time frame, they did not see a proposal of a three-party joint venture.

Q I believe your testimony was at that time they saw no need for partners at all.

A They did not see a three-party joint venture, and therefore with--in the absence of a three-party joint venture, they did not see any need for a partner at all.

Q And at that time, March 18, 1994, you had a very successful cable television system, didn't you?

A What do you mean by a very successful cable television system?

Q You had been awarded the license, yes?

A Yes. The cable television license, yes.

Q You had launched the system, yes?

A Yes, we had launched.

Q In fact, you had launched four months ahead of schedule, yes?

A No. We had launched on schedule.

Q All right, you launched on schedule. And since the time of launch, between launch and March 18, 1994, you were very optimistic that this was going to be a successful system?

A We--at that time of March 1994--

Q Um-hum.

A --we had only launched and there was not enough feedback for us to evaluate.

Q Certainly didn't need UIH anymore, did you?

A That was not the point.

Q You didn't need UIH anymore, did you?

A That was not the point. That--

Q That's not my question, Mr. Ng. You didn't need UIH anymore, did you?

A In what context?

Q You just didn't need them anymore for your cable television project.

A I don't understand the context.

Q Let me ask another question. Since March 18, 1994, you haven't taken on any cable television partner, have you?

A No, we have not.

Q And since March 18, 1994, you haven't taken on any telecom partner, have you?

A No, we have not taken on any partner.

Q Any partners. And so Wharf owns the whole shooting match, right?

A Yes.

Q And the whole shooting match is the cable TV system and now a telecom system, right?

A If you describe that as a shooting match, yes.

Q You've got no partners that are going to--you're going to have to share the wealth with, right?

A We have no partners that would share the up side and the down side with.

Q All right. And that's a judgment that you've made as a business that you're going to keep this thing for yourself.

A It is a judgment that the company has made.

Q Now you testified that at the end of your episode with Mr. Schneider, going into--I guess now I'm going to go off the chart--going into May of 1994, April and May of 1994--and this is the Exhibit 1392, where you offer to make an ex gratia payment and tell them to get the accountants over there so they can work out the numbers; do you remember that?

A Should I get the exhibit?

Q Well, if you need it, but let me just ask you, do you remember towards the end of April or May 1994 that you're offering to pay UIH and tell them "Get the accountants and we'll figure out what we owe you"?

A In the springtime of 1994, yes, I was suggesting to UIH.

Q Now, never did you ever have a deal with UIH where they agreed to provide you services in exchange for some kind of hourly rate and payment fees, did you?

A I disagree with that.

Q You're saying that you had--you had an agreement, as of the time you were offering to pay UIH, that you were under an agreement to pay UIH for the time and effort it had spent? You had some obligation?

A There was a technical cooperation agreement which the parties signed in September 1992. Under that technical cooperation agreement, UIH was to provide a number of services, and if those services were provided, then Wharf Cable would be obligated to make payments to UIH in return for the services.

Q So why didn't you? Why didn't you just write them a check? Did you believe you were obligated under the TCA in April '94, May '94 to write UIH a check?

A If UIH had performed services under the so-called TCA, then we would have obligated--we would have been obligated to make a payment to UIH.

Q Now you're offering an ex gratia payment, right?

A We were offering an ex gratia--a voluntary payment.

Q In other words, you didn't think that anything obligated to you to make a payment at the time?

A No, we did not think we were obligated to make any payment.

Q You're aware of the testimony in this case because you've testified that you've sat through and paid attention to it, that UIH put in about 8,000 hours in your project; are you aware of that?

MR. JENTES: Excuse me, Your Honor, I think that is not an accurate statement of the record. I think the only document we have has been 5,400 figure, and then we've got some numbers beyond it, but I haven't seen anything that says it's 8,000.

MR. CHASE: We've had testimony from at least two UIH witnesses to that effect. And I'll just throw it out as an arbitrary number, I'll say between 5,200 and 8,000 hours.

Q (by Mr. Chase) Were you aware that UIH was putting in that kind of time on behalf of your company on behalf of your cable television system?

A I have heard that claim made by some witnesses.

Q Now let me ask you to look at Exhibit 61--1393, I'm sorry, 1393.

THE CLERK: I guess we need to get your books, right?

MR. CHASE: Yeah, I'm sorry.

THE CLERK: Okay.

MR. CHASE: Yes. We're going to need the white books.

THE WITNESS: Mr. Chase, can you give me the number again, please?

Q (by Mr. Chase) It's Exhibit 1393, it's a May 18, 1994, letter from Mr. Mark Schneider to you. I think this is in the jury books. No? Okay, then I'll just run it up on the screen here. See that letter?

A Exhibit 1393, yes, that's in front of me.

Q Hold on a second, it may be in front of you but it's not in front of anybody else. Okay. This is the response that you got from Mr. Schneider to your offer of an ex gratia payment; do you remember that?

A Yes, I do.

Q And do you remember Mr. Schneider telling you, "We do not work by the hour, therefore accountants are irrelevant to this discussion. If you have a serious offer to compensate us for our efforts and our lost opportunities due to the time spent and the people lost in your project, then make one. We

obviously have differing views of your legal position." Do you see that?

A Yes, I do.

Q You didn't make an offer in response to that letter, did you?

A No, I did not.

Q In fact you made no proposal or offer after the date of that letter, did you?

A No, we did not, because we did not think that we could meet the demands which we now view were totally extravagant and excessive.

Q The letter says, Mr. Ng, that they don't work by the hour, if you have a serious offer to compensate for effort and lost opportunities, make an offer, and you never did, did you?

A We never made an offer in response to this letter.

Q In fact you never made any offer of anything at all, did you?

A We made an offer earlier on to pay under the TCA.

Q That's when you were trying to bait UIH?

A I never used the description "to bait" UIH.

Q We'll argue about that later, and I think we're all familiar with the document. You will acknowledge that you said "take the bait" with respect to the TCA, didn't you?

A I used some terms like that, but that doesn't mean "to bait" UIH.

Q All right, well, we'll give you plenty of time to talk about that in a while. Mr. Ng, let me talk to you about your present position. You have some very impressive titles with Wharf and some of its subsidiary companies right now? Yes?

A I hold some positions with Wharf and its subsidiary companies. I--

Q How much do you get paid?

A How much do I get paid?

Q Yes.

A I get paid a basic salary, a housing allowance, and the basic salary and the housing allowance together would come up to approximately 300,000 U.S. dollars a year.

Q All right, and you get stock options as well?

A I have stock options and what is--what we call discretionary bonuses.

Q Okay. And those, I'm not going to ask you to go into the details, but I take it all these things have added value over and above your 300,000?

A Yes.

Q And you also have stock in the companies, Wharf and Wheelock, don't you?

A I have stock in Wharf.

Q All right. And you get--you said something a moment ago you get bonuses every year?

A Not necessarily every year. It's a discretionary bonus, it's payable voluntarily by the board as the board pleases.

Q So you've got to do a good job and they'll give you a bonus.

A If I help the company to meet objectives and so on.

Q And did you get a bonus for 1996?

A That hasn't been paid yet.

Q Did you get one--

A That hasn't been announced or paid yet.

Q Did you get one for 1994?

A Yes, I did get one for 1994.

Q For the cable television system?

A For my performance.

Q That's what you did during '94, right?

A I also did telecommunications and communications generally.

Q You got a bonus in '93?

A I got a bonus in 1993.

Q And that was also based upon the work you did on cable television and communications, right?

A Based on my work as an executive and as a director.

Q But you were doing almost exclusively, if not exclusively, cable television and telecommunications, right?

A I was almost--my executive time was almost exclusively devoted to communications, including cable television, telecommunications, and some related businesses in the communications field.

Q You get a bonus in 1992 for your work on cable and telecommunications?

A I did a bonus for 1992 for the work I did for the company, including the work I did on communications.

Q And for these years, 1992, 3 and 4, Mr. Woo was your immediate report, correct?

A 1992, 1993, 1994, yes, Mr. Woo was the person I directly reported to.

Q And whether you would get a bonus was very much within the control and discretion of Mr. Woo, correct?

A Yes, that's logical.

Q And that's true today, too, isn't it?

A Today? I do not report to Mr. Woo today.

Q No, Mr. Woo has no official titles with the company today, does he?

A No, he does not have any official title with either the Wharf Holdings Limited or Wheelock.

Q But he is a powerful shareholder, isn't he?

A He is a--he is not a shareholder, he has interest in some shares. And I don't--I'm not capable of going into what he owns or what he doesn't own.

Q Is it your testimony that he has no influence as to whether you get a bonus this year?

A I get my bonus with the--from the company, and the company--the chairman of the company is Mr. Gonzanga Li.

Q And my question was, is it your testimony that Mr. Woo has no influence as to whether you'll get a bonus this year?

A I don't know whether he has any influence or not. Mr. Gonzanga Li, my chairman, determines how much I am paid.

Q Now, in 1992 and 1993--1991, 2 and 3, your job was to carry out the wishes of Mr. Woo, correct?

A What time--excuse me, what time frame is this?

Q '91 through '94 with respect to cable television, your job was to carry out the wishes of Mr. Woo.

A My job was to carry out the wishes of the company, but the person I reported to was Mr. Woo.

Q And so the answer to my question would be yes?

A Yes.

Q And Mr. Woo had his basic what you called guidelines or requirements or criteria as to what had to be there for you to have partners in the cable television project, right?

A Yes.

Q And there's no way--there's no way you weren't going to follow the direction of Mr. Woo, was there?

A To the extent I can follow his direction, I would of course want to follow it. But to the extent that I cannot, then it's beyond my control.

Q Well, sitting here today reflecting back on 1992 and 1993 and the work you did on cable television, you followed his direction without exception, didn't you?

A I disagree with that.

Q You disagree?

A I disagree with that.

Q All right, we'll give you a chance to talk about that. With respect to the four requirements, did you follow his direction without exception?

A I, again, to the extent I was able to, I followed his direction.

Q Now one of his directions to you was win that license, wasn't it?

A His direction to me was--yes, to do everything we can to win the license.

Q And I believe you were here when he testified that he said this right out of the chute in 1990 or 1991 when HKCC fell apart, he was determined that you were going to win that license, right?

A Yes.

Q And the license as Wharf envisioned it at that time was a quinella. Do you know what a quinella is? It's a double play. It was going to be cable television--well, I'm mixing jai alai and baseball, but we're moving. Look, when you're from south Florida, sometimes you do that. You got a--it was Wharf's anticipation that you were going to have cable television and you were going to have telephone, right?

A Which time frame was this, I'm sorry?

Q 1990, 1991, that's what Wharf was going for.

A Yes.

Q And that had tremendous importance and value to Mr. Woo and to Wharf, right?

A Tremendous--that was of tremendous interest to Wharf and to Mr. Woo.

Q And you found out in 1992 that the first license was going to be cable television, right?

A Right, in that time frame.

Q And you also found out or believed that whoever got the cable television license would be the likely winner of the telecommunications license, correct?

A We didn't find out, nobody told us.

Q You believed that to be true, did you not?

A We formed a view that if we can get a cable television license then we would be in a better position to bid for a telephone license at that time, assuming that there would only be one new telephone license to be awarded.

Q And at that time that's what you were assuming, right?

A Yes. In the early 1992 time frame Although were signals beginning to filter through that government wasn't sure.

Q Now, you not only had the job of keeping Mr. Woo happy, but you were the guy he put out there that had to deal with the potential investors in the project, right?

A What else did I do, I'm sorry?

Q In addition to keeping Mr. Woo happy on the one hand, you had to deal with the potential investors in the project, right?

A It was my job to deal with them, but I had to delegate a lot of it to other members of my team.

Q I understand that, but you were the one that was primarily responsible, although you might have delegated some of that to Mr. Fung or others, right?

A Yes.

Q And you were yourself the policy decision maker, at least until you reported to Mr. Woo or to the board, right?

A On partnership issues I was never the decision--the policy decision maker, neither before nor after I report to Mr. Woo.

Q Well, now, Mr. Fung reported to you, right?

A Mr. Emil Fung reported to me.

Q And he would be out there dealing on a day-to-day basis with the UIH's of the world, right?

A He would be in discussion dealing with, using your term, the potential partners.

Q Okay, one of those being UIH, right?

A. One of those in that time frame was UIH.

Q In the time frame of 1992, right?

A 1992, that's correct.

Q And Mr. Fung would go out there and do whatever he did and report to you, right?

A Generally, yes.

Q And then you wouldn't go running to Mr. Woo with everything, you would talk to Mr. Fung, make a decision, and you'd go back and do something else. I mean, this is routine, right?

A I'm sorry, do something else meaning?

Q Well, you would--you would respond to Mr. Fung's reports with advice, suggestions, questions, or whatever as to how to deal with the UIH's of the world, right?

A When Mr. Fung reports to me--or reported to me about the discussions he had with potential partners, we would talk about his report, and there were a number of occasions where I would give him direction about how he should go back to the potential partners.

Q And you were aware on a regular basis of what the requirements and expectations of the potential partners were, weren't you?

A To the extent that they were communicated to Mr. Fung and to the extent that Mr. Fung communicated them to me, yes.

Q Well, it was part of Mr. Fung's job to understand that, wasn't it?

A It was part of Mr. Fung's job to understand the needs of the partners.

Q And it was your job, too.

A It was my job, too.

Q All right, let me ask you one more preliminary question and then we'll get started.

A We haven't started yet, huh?

Q Mr. Ng, you're being indemnified in this action, are you not?

A Am I being indemnified by whom?

Q By Wharf.

A Under the--I'm not a legal expert on this, but I believe under the so-called memorandum and articles of association or formation of the company the company does, as a matter of rule, indemnify its officers. There are some conditions, I'm not clear what the conditions are.

Q As far as you understand, all legal fees and any loss that may suffer is paid by the company, right?

A As far as I understand. There are some conditions, again. Provided those conditions are not contradicted, I am--I would agree that my legal costs and so on have been and will be covered by the company.

Q And so on means a judgment as well, correct?

A I'm not 100 percent sure on that. I cannot answer that question.

Q Do you have any basis to believe today that if there's a judgment against you the company's not going to indemnify you?

A I have no basis to answer that question either yes or no.

Q Okay. Mr. Ng, let's go back to HKCC for a little while here. Now, this was your first taste of cable television, right?

A This--you mean HKCC?

Q Yes.

A HKCC was my first taste of cable television.

Q Now, I'd like you to look at Exhibit 1417, please, in the white book.

A Excuse me, another book, not this one?

Q The white book--

A Oh, 1417.

Q --Exhibit 1417.

A 1417?

Q Yeah, 1417. And these would be responses that you--your company and you gave to some interrogatories asked in this case.

A I have the document.

Q You have it?

A Yes, I do.

Q Okay, and at the--in the back you can see the signature of Andrew J. Petrie. Do you remember him being your attorney at one time in this case?

A Yes, I do.

Q And he's now with Mr. Bauer's firm and he used to be with Mr. Jentes' firm, you're aware of that?

A Yes, I am aware.

Q Now, the question that I want to focus your attention on is Question Number 2, which talks about "For each member of the Hong Kong Cable Company, please provide a description of the strength or expertise that the member was expected to bring to HKCC, e.g. knowledge of cable television, knowledge

of telephony, etc." Do you see that? Do you see the question there?

A Yes, I--I see where it is now.

Q All right, now, it talks about what everybody brought to HKCC, and the first one was U.S. West, and that was U.S. West was bringing its telecommunications skills, right?

A On the second page, yes, it--first paragraph is U.S. West.

Q Now U.S. West is a telecom company, right?

A As far as I know, yes, U.S. West is a telecom company.

Q And they've had no interest in coming back in and being a telecom partner with Wharf on this telecom project since HKCC, have they?

A I have no basis to answer that question.

Q All right. Then you've got Codetel, which was a cable television company. Do you see that? That was the one providing the cable television expertise to HKCC?

A Yes.

Q And Codetel is a Belgian company, is that right?

A Yes.

Q And they were your experts on cable television at the time of HKCC, right?

A They were the expert to HKCC.

Q They had absolutely no interest in rejoining Wharf in an attempt to get a cable television license after HKCC failed, did they?

A Again, I have no basis to answer that question.

Q Now, these two overseas companies, Codetel and U.S. West, were expected to bring with them technology or knowledge of technology, did they do so?

A Did they do so to HKCC?

Q Yeah.

A To my knowledge, they brought some knowledge of technology.

Q Then it goes on to say--I'm going to skip Shaw Brothers, unless you want to talk about it--it says, "Both the Wharf Holdings Limited and Sung Hung Kai properties had at the time no experience in either telecom or cable TV. They were brought in for the general experience of doing business in Hong Kong and their knowledge about properties in Hong Kong because the construction of the network requires knowledge about the--about an access to the Hong Kong property market." And then it goes on to say, "The Wharf Holdings Limited was brought in to spearhead the bid and to counterbalance what was then the most obvious competitor, Hutchison." Do you see that?

A Yes.

Q And so that is a fact that at the time of HKCC your company had absolutely no cable television experience, correct?

MR. JENTES: Object, that misstates what this document says.

Q (by Mr. Chase) Well, you answer the question, forget about the document.

A At the time Wharf joined HKCC, Wharf had no expertise in cable television.

Q And whatever you learned about cable television you learned from Codetel at the time through HKCC, right?

A Not only from Codetel.

Q Well--

A No.

Q Well, let me put it a little bit differently. You had nobody at work that ever operated a cable television system?

A Of course we do.

Q You didn't at the time.

A Oh, in what time?

Q I'm talking about 1991, 1992.

A 1991, 1992, yes.

Q And who operated a cable television system?

A Mr. Frank Webb. He was--he had been a senior executive running cable television systems in the U.S.

Q He left in 1992, didn't he?

A He left in that time frame.

Q Yeah, he didn't stick around for the bid, did he?

A No, he did not stay for the bid.

Q All right. You have somebody there that was working on Rediffusion as well? That was this cable company you talked about in your direct?

A I--approximately that time, 1992 time frame, we had acquired Rediffusion, so we were running Rediffusion ourselves.

Q And Rediffusion was a cable television company--or you call it a cable--it had 12,000 subscribers, right?

A I don't know what the current number is, at that time I think it was higher.

Q Do you want to check your financing memorandum that you gave to the banks, or do you want to take my word that it says 12,000?

A I don't want to dispute you, but you're going back to the earlier time frame, 1991, 1992 time frame.

Q Right.

A The financing memorandum I'm not sure--

Q All right. Do you think it will--

A --relates to the same period.

Q Okay, we don't have to argue about that. I'm going to try to keep moving you ahead. All right, let me move you ahead a little bit and talk about your effort to try to get the cable television license for 1992. And let me talk to you about the advice you get from your consultant, Mr. Wise. Now, you were in court here when I showed this document to Mr. Woo, correct?

A May I know which exhibit it is?

Q I'm sorry, this is Exhibit 75.

A 75. Excuse me. I have it in front of me.

Q All right. And you've had a chance to look this over in the past week or so?

A I glanced at it, yes.

Q Well, this is something you read in preparation for your testimony, isn't it?

A I read this, yes.

Q And you saw Mr. Woo when he was here and you heard him and he testified about it, right?

A Yes.

Q And so you're well aware of this document, right?

A Yes.

Q And this is coming from the person that you pay to advise you as to how to deal with the government on things such as franchises?

A Mr. Wise was retained by us principally as an engineering consultant.

Q And in reading this document, you remember I asked Mr. Woo about Mr. Wise's advice over on page 10, where he says, "You better partner up with a cable company." I paraphrased that, you can read it for yourself. Where he says, "While it is of course not absolutely necessary to obtain expertise only from partners, the attitude of HK government has tended to be that it makes an important need. This is probably because it makes life easier for the decision maker if he has objective criteria on which to judge applicants." Do you see that?

A Yes, I do.

Q And this is a memorandum that you circulated to Mr. Higgonson and to Mr. Woo and to various other people, correct?

A To Mr. Higgonson and Mr. Woo.

Q And it's a memorandum, the advice you agreed with, correct?

A I noted the advice. It was one of various advisors.

Q What do you mean you noted it? You agreed with it?

A I heard it, I didn't disagree with it.

Q Well, actually, your company acted on it, didn't they? Look at Exhibit 91. You there?

A Yes.

Q Now, this is a memo from Mr. Woo to you, further thoughts to notes on cable, to establish criteria to win, and to sustain the winning image to consider potential partners such as TVB, a Bell company, Singapore, U.S. Investors, Japanese investors. Do you see that?

A Yes, I do.

Q And that became the strategy of your company, correct, to partner up with an expert cable company to help you win the bid.

A To partner up with telecom companies, a telecom company, and a cable company to help us win the bid.

Q All right, now I understand that you've got this theory of three, and so I'm not meaning to exclude a cable--a telecom company when I ask you, but you will concede you wanted a cable company, right?

A We were interested in having a cable television company to come in as a partner, right?

Q All right. And by saying that, I don't want anybody to construe that to mean you've excluded a telecom partner, okay?

A Thank you for the clarification.

Q All right. Now, you were communicating with this Hellman and Friedman, who were the--who were the people that--were the investment bankers for Falcon Cable, correct?

A No. As I testified earlier, they are actual a very large shareholder in the Falcon Cable.

Q Oh, so--okay, they're a shareholder, but they also act as their investment bankers, don't they?

A I don't know whether they acted as the investment banker. To me, I was dealing with them as a potential investor.

Q All right, that's fine. Why don't you look over at Exhibit 79, please. And this is a note--I'm going to ask you to look on page 79 at WC-25174, it's a note from Mr. Woo to you. And I'm going to ask you about Paragraph 5. This is a document you've looked at recently in the last few days, right?

A Yes.

Q And you heard me question Mr. Woo on this document?

A Yes.

Q And you knew it was coming, didn't you?

A I saw it coming.

Q Okay. And Mr. Woo is relating to you what he talked to Mr. Powers about. He said, "I said that U.S. investors"--I'm reading in Paragraph 5--"I said that U.S. Investors in this project could be attractive in a certain sense. However, that must be packaged so that not just capital participation, know-how should be packaged, and to any partner's qualifications so as to make our bid more attractive to Honk Kong government." Do you see that?

A Yes.

Q And that was a true statement that Mr. Woo was making to Mr. Powers, correct?

A I have no basis to say--to answer yes or no.

Q And that accurately reflects the strategy of your company from getting this cable television bid, right?

A It reflects a part of our strategy. That as not the only strategy.

Q No, you have other things, you've got to get wires and things, but you had a partner strategy, didn't you?

A Yes, we did have a partnership strategy.

Q All right. Go to Exhibit 157, please.

A 157.

Q 157 is a group of documents relating to communications with Murdoch. And that would be the Rupert Murdoch that you talked about before, the company Rupert Murdoch, the one that owns all the publishing houses?

A Yes.

Q All right, and this one, the one I'm going to ask you about, is your file memo with a copy to Mr. Woo, and you're talking about your discussions with a man named Halloway. And it's "Halloway asks that Wharf would expect from--what Wharf would expect from SCMP Murdoch.

MR. JENTES: I'm sorry, where are we?

MR. CHASE: I'm sorry. I'm on Exhibit 157--

MR. JENTES: No, that I got--

MR. CHASE: 25120. Oh, I'm sorry, I sometimes modify these so that I can get a notebook I can actually carry, and so I don't have all the page. But it's 25120, Exhibit 157.

Q (by Mr. Chase) Halloway asked what Wharf would expect from SCMP Murdoch. "S.N. explained that Wharf cable was looking for strategic partners, e. g. NYNEX, a cable company based in Denver, and Murdoch. We expect the strategic partners to bring their respective expertise and connections to the consortium." Do you see that?

A Yes.

Q That as in fact your strategy for partners, correct?

A That was our strategy at the time of this meeting with Mr. Halloway.

Q That was your strategy to win the cable television bid, was it not?

A That was our strategy at the time of this meeting with Mr. Halloway.

Q Well, I'm--let me take it forward now. That remained your strategy, didn't it?

A That remained our strategy for until the time of the bid.

Q All right, that's good enough. Time of the bid you decide to change your mind I guess, huh?

A Until September.

Q Well, Mr. Ng, let's talk about--let's talk about Exhibit 382. Exhibit 382 is a big document. Do you have 382?

A Yes.

Q Now, 382, which we've looked at in various contexts in this case, is your Wharf Communications Investment Limited, August 24, 1992, minutes of a continuous board meeting on August 11, 1992; do you see that?

A Yes, I do.

Q Now, that would mean the board meeting started on August 11th and it finished on August 24th, right?

A Yes.

Q Didn't go continuously for that time, it was resumed to August 24th, right?

A I don't remember we did.

Q Well, you don't--you're not like this trial, okay. All right, now, this board meeting involved the presentation of a strategy paper or strategy planning document on behalf of WCIL, Wharf Communications, correct?

A Yes.

Q And I'm not going to reread this whole thing because we've done a lot with this thing, I'm just going to hit some of the high points. Strategy Number 1 was strategic--

A Excuse me, excuse me, which page?

Q I'm sorry, page 5. It's lower--it's WC01356.

A Okay.

Q You there?

A Yes.

Q Strategy 1 was gain access to advanced know-how's and emerging technologies via impact acquisition and alliance with local and international strategic partners, right?

A Yes.

Q And so that's your strategy, right?

A That was the proposal for discussion.

Q All right. And down at the bottom where you talk about strategic partners, it says, "Initially WCIL will seek to associate with partners who are leaders in the readers or world and segmented in market areas, such as"--and then we flip over and, lo and behold, cable television, UIH, right?

A Yes.

Q And at that time, when you're making this presentation, you in fact considered UIH to be a litter in the region or the world in cable television, correct?

A No, we considered UIH as a potential strategic partner.

Q A potential strategic partner who's a leader in the region or world in cable television. That's what the sentence says.

A That's what the paper says.

Q Now, if you'll look over, please--well, this is a paper presented to the board of directors at WCIL, correct?

A Yes, it was a paper--

Q You're not going to--

A --presented.

Q --play games with the Board of Directors, are you?

A I don't mean--I don't know what you mean by playing games.

Q You're going to tell them the truth.

A We would--well, discussion papers are written to--for the purpose of discussion.

Q This paper is called WCIL Strategic Planning Document; do you see that?

A Strategic Planning Document, yes.

Q Now, I'm not trying to get you to say that this is the absolute bible, that it's the Ten Commandments, cast in stone, or whatever imagery I can get up there. What I'm trying to get you to say, and I think you'd agree with me, is that when you present something like this to your board, you do so in good faith as your best thinking at the time, right?

A Yes, but I cannot vouch for the 100 percent accuracy of this, because I see something else on that same page, cellular, JOS. JOS was not a cellular company. So this could be an error. I don't want to dispute this point, but I'm just saying I cannot vouch 100 percent for his accuracy.

Q Well, let's go on in the document, let's see how the document does. Go over, please, to control number 01369, and

it looks like a part of a flip chart or a slide show or some presentation. Are you there?

A Yes.

Q Strategic approach: "gain access to advance know-how's, products, and emerging technologies via impact acquisition and alliances with local and international strategic partners." Do you see that?

A Yes.

Q And that was the strategy being proposed here, right?

A Yes.

Q In fact that was the strategy that Mr. Wise proposed back in 1991, wasn't it?

A Mr. Wise back in the early part of 1991 was proposing something different, I don't remember he used language like this.

Q Nevertheless, he was telling you to get strategic partners if you wanted to get the license, wasn't he?

A That was his advice in early 1991.

Q Now, over on the next page it says, "Potential Strategic Partners: NYNEX Telecom, UIH Cable TV, Fox TV programming, right?

A Yes.

Q And that was your best thinking after intensive study as of August 24, 1994, correct?

A Correct.

Q And when I say intensive study--let me stop for a minute here. This is August 24, 1992, right?

A Yes.

Q You had been at this looking for a cable television strategic partner by that time for well over a year, hadn't you?

A On and off, yes.

Q And you had talked to a great number of companies, hadn't you?

A A great number of cable companies?

Q Cable.

A We've talked to several. I don't know what you mean by a great number.

Q Several will do.

A Yes.

Q And so in the over a year that you were talking to several cable television companies, by August 24, 1992, you concluded as to UIH as you've stated in this memo, correct?

A UIH. Yes, as of the time frame of August 1992, 24th.

Q All right. And let's go on to--I'm not going to ask you about Mr. Fung's note there, I think I'll save that for Mr. Fung. But let me ask you about where it says Strategic Equity Partners.

A Same document?

Q Same document, over on 01386. See where it says, "The participation of strategic partners in our communications projects represents a key competitive advantage in gaining committed and unbiased access to operating experience as well as industry profile and credibility. As the communication industry presently possesses a steep technological curve, our partners are also in a position to transfer research and development expertise that we would otherwise need to replicate at significant cost both timing and financial. Out aim in strategic partnerships having operations based in Hong Kong would be to maintain majority control. You see that?

A Yes.

Q Those are true statements contained in that paragraph?

A It was a recommendation, it was a proposal.

Q Well, it was a proposal that you felt in good faith was the correct proposal to make to your Board of Directors, correct?

A Yes, we proposed that to the board.

Q And over on the next page, where it says, "We are presently at the closing stages of signing memoranda of understanding with potential partners for Wharf Cable, and they include UIH, Fox, and NYNEX." Do you see that?

A Yes, I do.

Q And again, those were your good faith statements to your board in late August 1992?

A In that time frame? You have to read it in context.

Q Well, let me--let's read it in context. Look down and read it in context. Look down at "Relationship Building".

A Relationship building, yes.

Q Yeah, you see that next paragraph down there? I want to--

A Yeah.

Q --I want to focus on that one for a minute. "Relationship building. The bulk of the time spent in building relationship with stakeholders has so far been with potential strategic partners. We have taken a very selective approach to ensure that our partners have business expectations and cultures compatible with ourselves and that they indeed possess strategic value added complementary to our ambitions. This we have conducted through both verbal affirmations as well as through the circulation of draft partnership terms." Do you see that?

A Yes.

Q True statements?

A Not 100 percent accurate.

Q So you're not telling the board the truth here?

A Well, the intent was to tell the truth, but everything cannot be 100 percent accurate.

Q Well, Mr. Ng, in August 1992, late August 1992, you told your board that you have spent--taken a very selective approach to ensure that your partners have business expectations and compatible with--expectations and cultures compatible with yourself, right?

A That's what this document says.

Q And you're telling the truth to your board, right?

A No, I'm pointing out that this is not 100 percent accurate. And let me give you an example. It refers to partnership terms, draft partnership, circulation of draft partnership terms, and I am--I do not remember, there may have been, but I do not remember. We did that with Fox International.

Q All right. Error. So you didn't circulate partnership terms. You did it with UIH, didn't you?

A In that general time frame, yes.

Q And you did it with NYNEX, didn't you?

A Yes.

Q And you circulated separate partnership terms. Remember those JV considerations that we've talked about, separate ones for NYNEX, separate ones for UIH?

A Yes.

Q And that was all done prior to the time of this August 24th memo?

A Yes.

Q And this was part of your selective approach to ensure that your partners would have business expectations and cultures compatible with yourselves?

A This was part of the exercise.

Q And you had done your due diligence and satisfied yourself that they possessed value added complementary to your ambitions, and you did that through verbal affirmations as well as the circulation of draft partnership terms, right?

A We had done that to the extent we could. There were still some missing gaps.

Q Now, Mr. Ng, look over, if you will, at Exhibit 473. Exhibit 473 is your September 16, 1992, pros and cons memo that we've come to call this thing. This is not the copy that was marked all over by your chairman, this is--this is a fairly pristine copy. Do you see that?

A Yes.

Q And this was a document that you prepared in mid-September for the board members to consider the pros and cons of having UIH as an investor at the time of the bid, right?

A Yes.

Q And in this document you also did your best to tell your chairman and the others the truth, right?

A I reported the position as I understood it at that time.

Q All right. And as you understood it at that time, mid-September 1992, over on page 2, up at the top, you understood that UIH combines cable television expertise through its principals, such as Schneider, and international cable expertise through its present investments which none of the U.S. cable companies, including Time-Warner, etc., can claim. Now, that's what you reported to your chairman and various members of the board in mid-September 1992, right?

A That was one of the things I reported to my chairman at that time.

Q True statement?

A True statement, but one of the points I reported to the board.

Q Well, I don't understand your qualification. It's a true statement and you reported it to the board.

A That's what I said, it's--

Q All right.

A But one of the things I reported to the board.

Q All right. Now, on the same memorandum, over on the first page, when you're discussing the first option, and this is the option of Wharf 100 percent ownership, you make this observation: "Wharf's ability to implement without perceived industry expertise may be questioned. Without equity participation, NYNEX/UIH, not being consultants, may have other priorities. Hutchison will have industry players as equity partners." Do you see that?

A Yes.

Q Now, this in fact was an accurate statement that you were making to Mr. Woo and to the board, right?

A This whole document is a devil's advocate exercise.

Q I'm not going to play with the concept of devil's advocate at the moment. I'm going to ask you whether you were making

true statements to your chairman and to the members of the board.

A Well, clearly this was a devil's advocate if you look down 1C, Wharf's ability to put together a joint venture may be questioned. Hutchison can. Now, that is a devil's advocate. That's a very good illustration. Of course it is untrue that Wharf cannot put together joint ventures.

Q Well, Mr. Ng, I guess we're going to have to play with this for a minute. This piece was presented to your chairman and to others so they could decide whether UIH would be an investor at the time of the bid, right?

A Yes.

Q And your job was to present them with the pros and cons of whether UIH was or was not an investor, right?

A That is why I was playing the devil's advocate.

Q Your job was to put before them the good things about making them an investor and the bad things as well as not making them an investor, correct?

A My job was to put before them the good things that can be made about them as an investor and the bad things that can be made about them as an investor.

Q Can be--

A By--for instance, by a competitor.

Q Well, and also by the government, right? This whole thing was to see how you'd be perceived by the government.

A Possibly by some people within government.

Q Your first priority in this thing was in terms of winning the bid, right?

A I'm sorry?

Q The first priority in this memo was strategy priority in terms of winning the bid, right?

A How should the partnership structure, how--sorry. How should the partnership be structured from Wharf's perspective in terms of winning the bid as strategic priority number one. That is the background to the newspaper--to the paper.

Q And the paper is, how will Wharf be perceived if it has UIH as a partner as opposed to how will it be perceived if it has UIH not as a partner. That's what this paper's all about, isn't it?

A That's why I call it a devil's advocate paper.

Q Okay, it's for the image. How's the government going to perceive Wharf's bid? That's what this is about, the package.

A Image. Some of the questions that could be raised.

Q Now, Mr. Ng, where you make the statement "NYNEX/UIH not being consultants," that was a true statement, wasn't it? And I'm looking at point 1A, where it says, "Wharf's ability to implement may be questioned. Without equity participation, NYNEX/UIH not being consultants may have other priorities." Do you see that?

A Yes, I do.

Q You understood at that time that UIH was not a consulting company.

A I had been told by UIH that they did not want to be a consulting company.

Q And at no time in your relationship with UIH did you ever understand that they were in the business of selling consulting services?

A At no time up to that time.

Q And no time up to the time you wrote this.

A Yes.

Q Okay. Now, in fact, if I might, the companies--all the companies you were talking to, all the various cable TV companies, were only interested in talking to you on the basis of an equity participation, correct?

A I can't speak on their behalf

Q Well, you are the person who is out there talking to the Falcons, the UIH's, the TCI's, and whoever else of the world. You're the one out there, right, for Wharf?

A I was.

Q And when you're out there and you talk to a UIH or a TCI or someone, the first thing you want to find out is what's their interest?

A Well, the first thing I want to find out is who are they.

Q Yeah, and what they tell you is every one of these companies told you we are somebody that might be interested in your project, but only if we're going to be an equity participant. That's what the cable company's told you, right?

A Not necessarily. I don't think we can characterize it that way. They expressed and interest to invest, but not only as an investor.

Q Well, let's take Falcon for example. Falcon was the one that was in the bidding with UIH going into this June time period. Remember your counsel showed you those things you were talking about, talking to UIH? You're using the joint venture considerations. Remember that?

A Which time frame?

Q June 1992.

A June 1992?

Q If you like--why don't you just take a look, we'll take any one of these. Take a look at Exhibit 255. It would be in your notebooks that you were using yesterday.

A Oh, in yesterday's notebook.

Q 248, 255, take your pick. Why don't you just let me put it on the screen, we'll probably move faster.

A Hang on. What is the number again? What is the number again, please?

Q Go ahead and look at Exhibit 248, it's one page, it's easier.

A I don't have 248 in this book.

Q It's not in the--why don't you look at the screen, I've got the whole document on the screen. Okay, you see it? And this is--

A I can see the bottom of it.

Q --June 12th, 1992; do you see that?

A June 12, 1992, I do.

Q Yeah. And do you see where you're talking about the various companies you're talking to there? One is NYNEX, right?

A Yes.

Q Two is Falcon, right?

A And another one is Falcon, three is Falcon.

Q Well, okay. Three is Falcon, and then you've got News Corp., and then you've got UIH, right?

A Yes.

Q And I just wanted to use this document for the document to orient you as to the time frame. This is June 1992, right?

A Right.

Q And at that time you were talking to UIH, Falcon, News Corp. about cable television, right?

A Yes.

Q In fact, News Corp. is a programming company, right?

A News Corp. was a programming and service provider.

Q The primary cable television companies you were talking to at that time was Falcon and UIH, correct?

A In the June time frame, June '92 time frame, yes.

Q Prior to that you talked to several others, but by June those were the two standing?

A Those were--those and then of course this group of TCI, Time-Warner, and so on.

Q TCI, Time-Warner, eventually hooked up with Hutch reputedly, right?

A There was a report. I have no confirmation.

Q Well, I understand you have no confirmation, but your big case memorandum says that they're the allies of Hutch; do you believe that to be true?

A That was the best we could understand at that time.

Q All right. So now let's try to get to my question. We're talking about June 1992 and you've got UIH and Falcon, they're the two left standing, correct?

A What do you mean by left standing?

Q Well, those are the two cable companies that you're still talking to.

A Well, we were still talking to TCI and Time-Warner by June 1992, but--

Q All right, we'll put that--

A --These were--I want to get over this point.

Q I do, too.

A At that time--

Q Let's--let's talk about Falcon, because that's the only reason I took this frolic and detour here for a moment. Let's talk about Falcon. Falcon was only interested in your project if it could be an equity investor, right?

A They never said that to us, but they said they were interested in equity, so we never asked "Would you be interested if there was no equity?" We never asked that question.

Q Well, as a matter of fact, you guys went out of your way to tell Falcon that's the only way you would talk to a cable television company. Why don't you look at Exhibit 79, please. Exhibit 79 is again some of these documents, these Hellman & Friedman documents again. That's the large shareholder in Falcon. This is a letter by Mr. Emil Fung to Mr. Mark Nathanson.

A Hang on, slowly, slowly. Which page, there's a number of pages?

Q 25141.

A Okay.

Q On behalf of your company, Mr. Fung writes, "In the truest sense of a strategic adventure, we envision that all of our strategic partners will participate at a ground floor level

alongside Wharf and share pro ratably in both the up side and down side of the venture." Do you see that?

A Yes.

Q And that was in fact what Wharf believed the role of the strategic partner would be in addition to expertise, right?

A Yes, sharing in both the up side and the down side of the venture.

Q Being an equity partner in the venture, correct?

A Being an equity partner in the venture would be a typical example of sharing in both the up side and the down side.

Q You agree with Mr. Fung's definition there of strategic partner?

A That was the intent as of June 1992.

Q In fact, if we even go back to 1991, in your Horizon Magazine, tell us what Horizon Magazine is.

A Horizon Magazine. Horizon Magazine. This is an in-house magazine that we publish which is published by Wharf Holdings.

Q All right, and it tells all about the business of Wharf and its various subsidiaries, correct?

A Yeah. The subjects change from issue to issue.

Q All right, look at Exhibit 93 if you will, please.

MR. CHASE: I don't think it's in the witness book, so I have to--I'll finish with this document, Your Honor, and then I guess we could--

THE COURT: All right.

Q (by Mr. Chase) Let me hand you Exhibit 93, which is your Horizon from the summer 1991.

A Thank you.

Q Let me ask you to look over at the last page--well, actually, no. It would be in the lower right UIH 000693.

A Lower right? There are no numbers on the lower right.

Q Let me see yours. Excuse me one moment. Well, that is a problem. No, there are numbers, it's 00963, and it's about five pages into the document.

A Oh, okay.

Q Three 0's, 963, see it?

A Yes, yes, yes.

Q Indicating that this came out of UIH's files, correct?

A Yes.

Q Now, the only way UIH would get ahold of something like this is being provided by Wharf, correct?

A Yes.

Q And this document states--

A Or by other parties, but I'm not going to argue that.

Q All right. "Shareholders: A number of quality corporations local and overseas have expressed keen interest to become partners of the consortium. Wharf Cable has advised the government that it will underwrite the project and it will eventually take up not less than 51 percent equity. Potential partners will bring technical or industry expertise to the project over and above financial investment." See that?

A Yes.

Q Okay. And that was in fact the philosophy and the strategic partner philosophy of your company for the cable TV license, right?

A At the time of this magazine, yes.

Q And at least so far as we've gone now all the way through August 1992, correct?

A Yes.

Q Okay.

MR. CHASE: Lunch.

THE COURT: Hope you have a good one. 1: 30 today.

(12:00 p.m. - Jury excused.)

THE COURT: In recess.

(12:00 p.m. - Recess accordingly.)

AFTERNOON SESSION

(At 1:35 p.m. on March 26, 1997, with counsel for the parties present, the following proceedings were had:)

THE COURT: Thank you. Well, you're back this time.

MR. CHASE: Yeah, I decided to show, Your Honor.

THE COURT: Okay. I have a couple of things I need to tell everybody once the jury gets in.

(Jury present.)

THE COURT: There's a couple of things that came up in the judges' meeting I need to tell you about on the record, as we say.

As you all know, this Oklahoma City bombing case starts on Monday. If you didn't know that, you haven't seen all of these people running around looking like Armageddon is here. The first instruction that I had regarding this case when I said, "Well, what about our case here," was just go on business as usual, and don't worry about it. Well, then of course the parking rates have gone up. There's going to be some difficulty getting in the building, and so forth.

So now there are some new suggestions for you, and the first one is that do not wear your jury button coming into the building. You might be mistaken for that other case. And there is going to be, it is anticipated that some group exercising its First Amendment rights is going to be out in front of the building probably on Monday handing out brochures or leaflets with their ideas of how to reach decisions without having to have any law or courtrooms for it, and we ask you--you're free

to do so if you want, but ask you not to pick those up, because it just encourages them.

And there's a concept from some of these groups called jury nullification, and that means that what they are arguing is that jurors do not have to follow the law. They can reach any decision they want and nullify the law. And so this organization will be handing out these brochures or pamphlets.

I have, I don't know why, but for some reason or another a few years back, I wrote and did some research on this particular subject, and it's--you would be safer giving a monkey a shotgun than most of these people a typewriter.

They have twisted a whole lot of things in our history, and then come out and say they're absolutely right. And it would destroy everything that you've been doing here and everything that we're trying to do if you were to ignore the law and just decide you're going to do whatever you want to do.

But that's what's going to come out apparently on Monday, and so the Chief Judge said my advice is--it's not an order--but the advice is not to wear buttons when you come in because people will try and approach you, and the other is, and again it's up to you, but it would be advisable not to accept these materials, because then we might have to have some kind of an inquiry about it. So it's just better to deal with it as you can.

For the lawyers, there's going to be more difficulty getting in on Monday than was previously anticipated. Wear your pancake makeup when you mug the cameras that are out there. But you should be alerted to the fact that there might be some people out there who will know you by the clothes you wear and the briefcases you carry, and perhaps think that you have something to do with that case. So you should, likewise,

be alerted. Those are my official announcements. Now we can get back to the case. And the other final thing is if you have any problems, let me know about it. I'll get a machete and go out there.

CROSS-EXAMINATION BY MR. CHASE RESUMES:

Q All right, Mr. Ng, on that cheerful note, let's--

THE COURT: I tried to be cheerful.

Q (by Mr. Chase) Let's pick up where we left off here.

Now, at the moment, I want to focus on UIH. By sometime in June or July, Falcon decided they weren't interested; right?

A June, June, 1992?

Q Uh-huh.

A We decided at that time--I can't remember whether we decided we didn't want to work with them any more, or they decided, but we didn't pursue it with Falcon any more by about that July time frame.

Q All right. And so you've got UIH, and from the beginning, you had understood that UIH only was interested in an investment and it would be a minimum 10 per cent investment?

A I had been told by UIH representatives. They claimed they were not consultants and they claimed that the only thing they would do was to invest.

Q All right. And that's what you were told from the beginning, and that never changed; right?

A What never changed?

Q That you were told they're not consultants and they wanted to be investors.

A No, I have not heard anybody tell me that--anything different.

Q All right. And so you, in the middle of the summer of 1992, were talking to them as the only cable television company you were talking to?

A By July time frame, yes. Sometimes in July. In June, we were still talking to Falcon.

Q All right. Now, back in 1991, you took a look at UIH and you talked to them, and you concluded, if you'll look at Exhibit 128--do you have 128 there?

A Yes. Are you going to put it on the screen, too?

Q I'm sorry. Here we go. How's that?

Looking at Page 2 of 128, this is the September 18, 1991 memo from you to Mr. Woo, and that's where you run through the whole host of different companies, and you mention that, "UIH is very keen and it's somebody we can tie down reasonably quickly if we like. I sent you a separate note on them earlier this week." Do you see that?

A Yes.

Q And the note that you sent him earlier that week was actually some information you had received from NYNEX about UIH, wasn't it?

A I don't remember.

Q Do you remember testifying yesterday that you had asked NYNEX about UIH and they provided you some information?

A Yes.

Q Okay. And that would have been--you would have passed that along to Mr. Woo?

A I may or may not have. I cannot say definitively. And I'm not sure this was the same time frame.

Q All right. Nevertheless, you were certainly talking to UIH. And by January, 1992, and we've looked at this document, Exhibit 192--okay, now we're back over at the very early period, January of 1992, and you concluded that UIH's financial capability is not satisfactory; right?

A As I testified yesterday, we did not have sufficient financial information to assess the financial position of UIH.

Q That's in January, '92?

A It's in January, 1992.

Q And by July, 1992, you had absolutely nothing different, did you?

A We still didn't know about UIH's financial position.

Q Nevertheless, in July, 1992, you chose UIH to be your potential strategic partner for the cable bid; right?

A We intended to choose UIH to be our strategic partner in our cable television bid.

Q Although from the first time you were talking to UIH until mid-summer of 1992, you still believed their finances were unsatisfactory?

A I'm sorry, can you ask the question again?

Q Although you still believed their finances were unsatisfactory?

A Or that we still had no information or not sufficient information about the financial position of UIH.

Q Well, I don't want to quibble over words with you, but you started in January saying financial capability is not satisfactory; right?

A This is a note of a meeting, and these notes are sometimes shorthand forms.

Q Well, it's a note of a meeting where you were present, and it says, "UIH financial capability is not satisfactory."

A And I have testified yesterday what I mean by this.

Q All right. And between January, 1992 and July, 1992, you had absolutely no more information about UIH's financial capability than you had in January, did you?

A I answered that earlier. I cannot say that I have absolutely no further information. Suffice it to say that by July, 1992, we still did not know what the financial position of UIH was.

Q Let me put it a little bit differently. By July, 1992, you knew perfectly well UIH didn't have $50 million in the bank?

A By the July, August, September time frame, we did. At some point in time, in that time frame, we learned that as of the end of 1991, they did not have any money in the bank.

Q You knew that in early 1992 when you wrote, "UIH's financial capability is not satisfactory."

A First of all, if you are referring to this Exhibit 192, I did not write this note.

Q You approved it? You approved those minutes, didn't you?

A No, we don't approve these notes. These are informal internal notes. These are not formal board minutes that have to be approved.

Q Well, let me do it a little bit differently. With whatever state of knowledge you had in July, 1992, you eliminated Falcon and you chose UIH; right?

A By what time? I'm sorry.

Q July, 1992.

A July, August, somewhere in that time frame.

Q All right, let me depart for a second here. When I first started questioning you, I asked you about your deposition. Do you remember that?

A Today?

Q Yes.

A Yes.

Q And I asked you whether you had an opportunity to review the deposition, sign the deposition and make corrections to the deposition; didn't I ask you that?

A Yes.

Q I'd like to borrow one of the volumes from Mr. Gilmore here for a moment. If I might approach?

Mr. Ng, I just grabbed at random Volume 4 of your deposition. And it has at the conclusion of it--it's got a page called Errata. I take that to mean errors, don't you?

A May I have a copy of the--

Q Well, I'm afraid we only have the copy, so you'll have to look up on the screen, if you will. But I'll tell you what I'll do. You can have the only copy. Why don't you take this. Volume 4 has a series of pages called Errata.

MR. CHASE: May I question the witness from here for a moment, Your Honor?

THE COURT: Yes, please.

Q (by Mr. Chase) A series of pages called Errata. And those were errors that you discovered in the deposition; correct?

A Let me take a minute to read this.

You are referring to this page, Errata page?

Q Well, there's a number of them.

A Okay.

Q I'm just asking you to confirm those are pages of errors and then you signed at the bottom and dated the errors that you found in your deposition; right?

A The errors that were found by me or by my lawyer.

Q Well, you signed at the bottom of the page. That's your signature; right?

A Yes, it is my signature at the bottom of this page, and on the two following pages.

Q In fact, it's your signature on the bottom of every single page that has the word Errata written on it, isn't it? That's your signature all over the place.

A There's only one page that has the word Errata written on it, and I have signed that page.

Q And then the next page is a continuation, and it says Errata, and you signed that?

A Where does it say Errata?

Q No, it doesn't say Errata.

A Oh, I'm sorry.

Q Stephen Ng down at the bottom?

A Well, I testified just now I signed that page, which has Errata written on it, and I signed on the two subsequent pages immediately following.

Q All right. Now I want to go back to the screen here so the jury can see what you and I are doing. And I've got a different

volume here, so if you'd look up on your screen--well, it's the same deal. I'm looking at the original of Volume 2. Do you see where it says Errata up at the top?

A May I really not have a copy?

Q Well, yeah, because this is it, and I want to--you can come up here and stand with me. Do you want to come up here?

A Is that what I should do?

Q I'd like to use the screen so the jury can see what we're doing.

THE COURT: Sure, go ahead.

MR. CHASE: Come on, we'll have fun.

THE COURT: Well, not too much fun.

Q (by Mr. Chase) All right. How you doing?

A Well. Thank you.

Q Okay. This is--what I'm showing the jury here is the first page of this volume that says Errata at the top, right, very similar to the last one?

A Yes.

Q And then it has a series of corrections that you have made; correct? Those are your corrections to that particular part of the transcript?

A These are corrections made by myself or by my attorney on my behalf.

Q All right. But then at the bottom of it, you signed; correct? That's your signature down there, right, and dated 8-30-95, August 31, 1995? That's you; right?

A Yes, I signed and that is my signature.

Q All right. And then the next page, more of the same, more errors that were in the transcript, and more signature and more dating; right?

A On the next page? Yes, more errors and my signature at the bottom.

Q And then it keeps going with more errors, more signature; correct? I'm not going to go through every one of them unless you want to.

A Yes.

Q All right. Then at the end, on each one of these, there's a certificate of deponent. Do you remember you were the deponent; right?

A If the word deponent means the person who was deposed, yes. I'm sorry, I don't understand that word.

Q That's your signature; right?

A Yes, it is.

Q All right. And it says you have read the deposition, you've made the corrections and this is your signature as of August 31, 1995; correct?

A Yes.

Q And you did that on all five volumes of your deposition; correct?

A I don't want to argue with you. I haven't seen them. But, yes.

Q Does this refresh your recollection as to whether you read your deposition after you got the transcript back?

A Yes.

Q Thank you.

A May I return?

Q You or me.

MR. JENTES: Now that will be a novel--

THE COURT: It's probably a lot more comfortable on the other end of that microphone.

Q (by Mr. Chase) Look, please, if you will, at Exhibit 336. I'm sorry, don't look at 336. I want to stay with this financial question for a minute.

You talked about the fact that you started to learn more about UIH in the August, September time frame of 1992, their finances?

A What is the question again? I didn't hear you.

Q It's a lousy question. Let me ask you if you'd look over at Exhibit 465. This is the September 15, 1992 bid case presentation to the board. Do you see that?

A Yes.

Q Now, I'd like you to turn over to Page 20 of the presentation which has the partnership issues on it.

MR. JENTES: Your Honor, I don't know that it's relevant, and if Mr. Chase says it is, then it doesn't make any difference, but the copy of this document that's in the notebook is not a full copy of the bid case presentation. It's just portions of it, and I think the witness ought to know that this isn't the whole document.

MR. CHASE: The witness notebook, you mean?

MR. JENTES: Yes.

MR. CHASE: That's probably right. I mean, to keep things--

MR. JENTES: Yes. if it doesn't have any pertinence to your question, that's fine. But I think he ought to know that that's not all of the document.

Q (by Mr. Chase) If you need to see the entire document for any purpose, if you'll look in those black books behind you, we'll be able to supply you anything you want. But for convenience, what we've done is we've made some selections.

Are you on Page 20 there with the partnership issues?

A Yes.

Q Now, you see where it says partnership issues, and it's got NYNEX laid out with one set of information, and then UIH with another set of information?

A Yes.

Q And this is the bid presentation that was the culmination of the efforts and brought to your board in mid September, 1992?

A Yes.

Q And there you talk about UIH is not a balance sheet company; right?

A Yes.

Q And by that, you testified I believe that they were financially weak?

A I don't know whether I testified, but by that, I would mean they did not have a strong balance sheet.

Q Something you knew from the very beginning?

A We had never been shown a strong balance sheet from UIH.

Q Well, without being shown a strong balance sheet, as a good businessman, what's your assumption as to whether somebody's got a strong balance sheet?

A I don't want to make assumptions. I would ask for information.

Q And you didn't have it, according to you; right?

A And we kept asking for information.

Q All right. Nevertheless, by September 15th, you're still ready to recommend they be your partner; right?

A This was not a recommendation.

Q This is your recommendation to the WCIL board; is it not?

A No, this was not a recommendation. This was a presentation to the board of the position as of that date.

Q Whose position?

A Of the project's position.

Q Who's the project?

A The cable television bid project.

Q Yeah, but who? I mean, projects don't up and make a presentation. Who's doing this?

A Oh, who made the presentation? The presentation was made by myself and my staff.

Q And the presentation by you on behalf of the project is what the project had concluded to bring to the board in mid September, 1992 called the bid case presentation; right?

A What happened, as I testified just now, Mr. Chase, is by September 15, 1992, which was two weeks before bid closing date, we went to the board and reported to the board on the position we had reached by that date.

Q You want to call it a position. I'll call it a position with you. And this is the position that you're presenting to the board; right?

A Yes, this was the position we were presenting to the board.

Q All right. And not withstanding UIH not being a balance sheet company, you're presenting a position to the board that they be your 10 per cent partner?

A That--I'm sorry, can I hear the question again?

Q Yes. Despite the fact that UIH is not a balance sheet company, you're presenting a position to your board that they should be a 10 per cent equity partner?

A The presentation to the board said UIH wanted to be a 10 per cent equity partner, and interested in more.

Q And this is the position of the project being presented to the board?

A This was part of the project.

Q All right. Well, I know we don't have wires and cables here. We're just talking partners here. Okay, let's talk about not a balance sheet company.

The next provision down there says default provisions; do you see that?

A Yes, I do.

Q Now, that's directly related to not a balance sheet company, isn't it?

A Not necessarily.

Q Look over, if you will, please, see where it says partnership on the next page? It says Partnership 2 and then Partnership 3 and then Partnership 4. Do you see that?

A Yes.

Q All right, I'm going to ask you about Partnership 4. See where it says, "Generally, shareholders defaulting in funding will be diluted." Do you see that?

A Yes.

Q And dilution means that if you don't make your capital contribution, the value of your interest goes down, or your percentage interest goes down?

A That is one of the results of defaulting.

Q Okay. And that provision then would give a company like UIH the option as to whether it was going to fund the capital contribution or not; right?

A If you want to describe option in this manner, the answer is yes. But that option is no different from paying your mortgage payment to the bank. You always have an option not to pay--not to meet a mortgage payment.

Q But, you see, you're wrong, because if you don't make your mortgage payment, Mr. Ng, they can come and take your house away and they can sue you for the amount you owe them; right?

A Right.

Q And in this provision here, the worst that could happen to a defaulting shareholder is they give up some of their interest, but you can't sue them for the deficiency, can you?

A Wrong, depending on how the default provisions are written. And in many cases, default provisions are written

allowing for dilution without prejudice to any rights and obligations of the other shareholders.

Q Well, let me ask you this, Mr. Ng. Do you want to go through this document and tell me if you can find any reference to the fact that there would be a claim against a defaulting shareholder and its equity?

A Are you referring to this bid case presentation?

Q Yes.

A This bid case presentation does not purport to be the entire--does not purport to contain all of the provisions that would need to be in a shareholder's agreement.

Q So the answer is there's nothing here?

A Based on the few pages that I have been shown in this notebook, let me take a minute to see.

(Witness reviewing exhibit.)

A I don't seem to see anything else in these few pages.

Q And I guess we all know that we don't have a shareholder's agreement. I think somebody on your side of the table has made that point once or twice, so there's no point in us looking for that.

Let me ask you to look over to Exhibit 336, please.

A 336?

Q Yes.

A Yes, I have it.

Q 336. Now, 336, somehow or other everybody is getting confused about what the August 11th board meeting is. This is your August 11th board meeting; right? Exhibit 336, this is the minutes of that meeting?

A I don't have the complete set. But on the front page, it says minutes of that board meeting on the 11th August.

Q All right. And on 11th August, were you the presenter here for Wharf on the partnership issues? Were you presenting for the board?

A I would have led the presentation.

Q All right. And at that presentation, you were talking about UIH and NYNEX being on two separate tracks for partnership consideration; right?

A Two separate tracks were reported.

Q Yes. And if you go back to the bid case--I'm sorry to do this to you, but it's part of being a witness. If you go back to the bid case, 265, the two separate tracks are perpetuated; right?

A You mean go forward to the bid case. Bid case was September 15th.

Q Right. And if you go back to September 15th, you see that there's still two separate tracks, UIH and NYNEX; right?

A 265?

Q I'm sorry, 465. The other bad part about being a witness is you have to listen to incoherent questions. 465.

A And what was the question? I'm sorry.

Q I just want to point out that you've got UIH and NYNEX separate paths again; right?

A Separate status, separate progress status.

Q And this is the position that you're presenting to your board at that time; right?

A Which time?

Q September 15, 1992.

A That was the position that we reported to our board on September 15, 1992.

Q And the partnership terms that we just went through a moment ago, a couple of them, where it says partnership and it has all these terms listed throughout here--

A Are you referring to the September 15, 1992 document?

Q I'm still on that document, yes, and the partnership terms under Partnership 2 where it says, "JV company," and then it says, "CNCL will invest," I'm reading down the line, "Wharf Communications will own, Wharf Communications will appoint," and then it goes on with some other terms. And then you turn over the page, got a whole other page of terms, "super-majority, Wharf Communications, plus one director. Shareholders will commit," do you see the next page has a whole bunch of things there? Do you see that?

A Yes.

Q And then the next page has even more terms. Do you see all that?

A Partnership 4? Yes.

Q Yeah. And when you made this presentation to your board, these are the terms that UIH had agreed with you on; right?

A I'm sorry, the question is?

Q These are the terms that Wharf and UIH agreed on at the time you made this presentation to your board; right?

A This was the position that had been reached between the negotiators representing UIH and Wharf, and that was what we reported to our board.

Q Okay. Now, UIH was, therefore, aware of all these terms if they agreed with them; right?

A I have no basis to say whether or not, but a negotiator should be aware of it.

Q The negotiator being Mr. Fung?

A No. You're talking about UIH?

Q Well, okay, Mr. Fries, I take it you're talking about.

A Mr. Fries was the UIH negotiator.

Q All right. And UIH would also have been aware of the two separate tracks that you had UIH and NYNEX on; isn't that right?

A They should have been.

Q You didn't make any secret of that fact?

A No, we didn't keep anything away from them.

Q Now I'd ask you to jump ahead here for a minute. I want to show you this document. This is Exhibit 533, and that would be in the documents that your counsel showed you yesterday.

A Excuse me. That's in the next book.

Q 533. That would be in the documents you looked at yesterday.

A Apparently not.

Q Well, I'll tell you what, I can give you one.

This is what you prepared, you said, as a summary of the Wharf bid so that there would be no mistake by anybody as to what was the deal?

A Yes, I prepared that on the 25th of September, 1992.

Q You never showed this summary to anyone from UIH, did you?

A I cannot remember whether I showed this particular document to UIH.

Q Now, I wanted to ask you about the part about UIH in the document. Do you see where it has that?

Now, as of the time you prepared this, and I think the date of the document is September 25, 1992?

A Yes.

Q This was an accurate reflection of your view of UIH, "Cable partner, pioneers through its principal and very successful in U.S. cable industry. The most active and experienced U.S. cable company in international markets. Managing partner in UIH, Time Warner, cable joint ventures around the world. Ambition in other markets in Asia. Technical cooperation agreement to make available technology and know-how." Do you see that?

A Yes.

Q And did that accurately reflect your thoughts at that time about your partner, UIH?

A A lot of this information of course came from UIH themselves. So to the extent this is--a lot of the information came from them, that was how we would--by this note, this was how we agreed we would describe UIH in the bid.

Q Well, when you put it in the bid, you adopted it; right?

A When we put--whatever we eventually put in the bid, we adopted that.

Q All right. And this view of UIH that you circulated among Wharf for people to get an understanding of what you were saying, you stand behind this language; right?

A This was circulated to people in the team, and it's quite possible UIH people on the team also received a copy.

Q My question is you stand behind the language, do you not?

A This was the language that was distributed to the team so that when they're writing the bid, they would use this as the basis.

Q You stand behind the language, do you not?

A For the purpose of writing the bid and based on the information provided to us by UIH, we stood behind the language.

Q And at the time you wrote this language, you were still unhappy with the knowledge you had of UIH's financial situation; right?

A We still had no information or insufficient information to confirm to us that UIH was capable of making this financial investment.

Q Turn over to the next page, please, of the document. I'm going to ask you about that numbered Paragraph 6 at the top there where it says, "At an appropriate time in the future, Wharf intends to invite its strategic partners and other potential partners to participate up to an aggregate total of 40 per cent in the equity of Wharf Cable, Limited. Wharf will retain the remaining equity and continue as the managing partner." Do you see that?

A Yes.

Q Was that an accurate statement of Wharf's intent as of the time of the bid?

A As of the time of writing this note, 25th of September, 1992, yes.

Q Well, was it an accurate statement five days later as of the time of the bid?

A As of the time of the bid, this was an accurate statement also.

Q So you intended to have UIH become a partner, although you didn't know a thing about their financials at this time?

A Well, we intended UIH to become a partner provided they could confirm their financial capability, and throughout 1992, UIH was telling us, they kept telling us that don't worry, we will be able to prove to you, Wharf that is, that we, UIH, is good for our money. And you will notice, too, that in this particular note, under UIH, we did not say anything about how strong their financial position was. That is something we deliberately avoided.

Q Okay. So you deliberately avoided saying anything about UIH's financial position in this note and in the bid?

A That is correct.

Q And you deliberately avoided telling the government anything about UIH's financial position?

A I'm sorry?

Q You deliberately avoided telling the government anything about UIH's financial position?

A Yes.

Q And that's true throughout the entire September, October, November time period while your application is pending?

A As far as I can remember, yes.

Q Okay. Now, as of the time you're writing this language, and as of the time of this bid, for all you know, because you've only seen UIH's balance sheet, all they've got is a million dollars; right?

A Well, the last balance sheet we saw was a balance sheet as of 31st December, 1991, which by this time was already out of date.

Q So by this time, as far as you know, they don't have any money?

A I had no basis to conclude one way or another. For all I know, they could have had $500 million in the account. But there was no information.

Q Let's stay with your first statement, Mr. Ng. You had no basis to conclude one way or another, is what you're saying?

A That's what I said.

Q Meaning you had no basis to conclude at this time that they could afford to $50 million on the table right then and there, could they?

A We did not have information about UIH's financial position as of this time.

Q Now, let me ask you, getting a little bit ahead of myself here, eventually you had UIH running your implementation team, didn't you?

A Wrong.

Q Well, I guess maybe I am too far ahead of myself. We'll have to talk about that. You had them playing a significant role in the implementation?

A I had them playing a role within one department of my implementation team.

Q I'll tell you what. We'll get to that in a while. But all that started about within a matter of days after this memo I just referred to you; right?

A The September 25th memo?

Q Right.

A It was starting at just about that time, yes.

Q All right. Good. Now, let me talk to you about some things UIH did for you before the bid went in. You and I will have a lot of time to talk about what UIH did for you after the bid. But first I want to talk to you about before the bid, and I'd like you to look over at Exhibit 262, if you wouldn't mind. This is Mr. Schneider's--

A I'm sorry. That's in another book, I'm sorry.

Q Now in the white book. This is Mr. Schneider's letter of June 19, 1992 to Mr. Ng. That is in the jury book.

A And, Mr. Chase, can you give me the number again, please?

Q Yes, 262.

A 262.

Q Have you got it?

A Yes.

Q Do you remember that letter?

A Yes.

Q You testified about it on direct?

A Yes.

Q All right. Now, this letter follows your get acquainted, kick the tires meeting by a couple of weeks; correct?

A Yes.

Q And in this letter, Mr. Schneider proposes down at the bottom where it says business plan financing, apparently they were satisfied with what they saw because he said, "We would be willing to devote an operating person, financial analyst and engineer to work with your team to financially model and develop the final franchise application. We can have these people available to you in Asia by the end of July, 1992. If we win the franchise and go forward, we would like the time and effort contributed toward our equity contribution." Do you see that?

A Yes.

Q And you recall receiving this letter?

A Yes.

Q Now, look, if you will, please, at Exhibit 309. Exhibit 309 may or may not be in the witness book. Okay, Exhibit 309 is

a memo of July 23, 1992 from Mr. Fung to you regarding an upcoming conference call with UIH and a visit to Hong Kong. Do you see that?

A Yes, I see it.

Q Okay. And in the memo, Mr. Fung says to you, "I plan to have Mike and Bill sit down with our cable unit heads between August 3rd to August 5th to be filled in on our strategies following the framework announcement. Steve Moss and Blake," both of those are UIH people; right?

A At that time, yes.

Q At that time.

A Oh, I'm sorry. When you say UIH people, do you mean UIH staff?

Q Yes.

A I'm not sure. I don't know whether they were consultants or staff.

Q All right. Well, they didn't work for Wharf at that time?

A No, they did not work for Wharf at that time.

Q And you weren't paying them?

A We were not paying them at that time.

Q When you say at that time, you didn't put them on your payroll until April, 1993, did you?

A Somewhere in the time March, April, 1993.

Q All right. Just so we don't have to keep saying at that time, I'm talking about July 23, 1992. And now I'll start over again. "Steve Moss and Blake is available for three weeks of the month to help us with our number crunching and become part of our project team resources. I think we should take them up on the offer. If this arrangement is acceptable to you, I will start to put together an agenda and arrange for suitable office premises to house the UIH team." Do you see that?

A Yes.

Q And do you remember that being agreeable to you?

A I agreed to have them come to Hong Kong and work with us.

Q And then the next paragraph says, "As for the conference call, we will need to confirm how this team will be compensated. Sonjia is of the understanding that this process will be part of their due diligence efforts, but you may recall that Mark's letter envisioned some transfer pricing." Do you see that?

A Yes.

Q What do you understand transfer pricing to be?

A What do I understand now or what did I understand then?

Q Well, did you go back and look at Mr. Schneider's letter to see what Mr. Fung was talking about?

A At that time, no.

Q Well, do you understand that Mr. Fung meant that when he said, "If we win the franchise and go forward, we would like their time and effort contributed toward our equity contribution," do you see that?

A No, I need to turn back to that page.

Q Okay.

A Yes, I see that.

Q And that's transfer pricing, isn't it?

A That can be considered partly as transfer pricing, part of it can be considered.

Q All right. Now, you did agree, did you not, that that would be the situation, that the cost of these people to UIH would be counted toward their equity contribution in theWharf Cable project?

A What I did agree to was that we need to break down the cost incurred by UIH into two major portions. There is one portion which is attributable to due diligence, that is, the work they need to do in any case to consider investing in Wharf Cable, to familiarize themselves with the project, to familiarize themselves with the team, and to make a decision as to whether or not to invest in Wharf Cable. That is what in our business is called due diligence. That is for the prospective investor's own account.

The second part, namely work that actually contributed towards the enhancing the project, value added to the project, yes, I did agree if we consummate a joint venture and if we win the bid, then the second half of those costs would be covered by the joint venture.

Q So is the answer to my question when UIH comes and they sit in the Wharf offices and they do what's suggested on this document, that's going to be transfer prices, that's going to count towards their equity contribution?

MR. JENTES: Object, Your Honor, asked and answered.

THE COURT: Overruled.

THE WITNESS: I have answered that question. That portion of the costs in respect of contributing to enhance the value of the project, that we agreed, if we go ahead and do a joint venture, then the joint venture will pay for those costs. But if these were costs related to the investigative work, then that would be cost that UIH will need to bear by themselves.

Q And when you and Mr. Fung agreed to accept Mr. Schneider's proposal, as set forth in this memorandum, you understood that was going to be value added to your cable project?

A I'm sorry, Mr. Schneider's proposal, you are referring to the earlier letter?

Q That's correct.

A Well, Mr. Schneider's proposal did not make clear what is due diligence and what is contribution to the project.

Q Look at Exhibit 309, please.

A 309?

Q Yes.

A Yes.

Q And when Mr. Fung tells you, "I think we should take them up on the offer," do you see that in that paragraph that I've highlighted and it talks about the people from UIH coming and helping you with your number crunching and become part of your project team resources? And then he says, "I think we should take them up on the offer." That's value added to your cable system, isn't it?

A A part of their work was value added to our cable system. The other part was their own investigative work.

Q Does this thing say anything inviting over UIH and having them do their own investigative work? It talks about having them work with your people on number crunching.

A Well, this particular note may not say that, but we invited them earlier to come and do their investigative work.

Q Let me ask you to look over at Exhibit 604, please.

A That's another book.

Q It's another book. Same color.

A 604, Mr. Chase?

Q Yes, 604. This is a memo from Mr. Pittman to Mr. Fries dated October 14, 1992. It's very short.

A Yes.

Q I just want to ask you if this is consistent with your understanding. Mr. Pittman says to Mr. Fries with respect to the telecom bid, "All consultants and third party costs, as with the cable bid, are assumed by Wharf. UIH and NYNEX

furnished supporting staff at their own cost. If we win, cost incurred becomes a contribution to equity."

Is that a fair summary of your understanding of what UIH's costs would be in the event you won the bid?

A This is an over simplification, and we need to understand what the words here mean. All consultants; there were a lot of consultants on the UIH side as well, and the intent, the agreement we had at that time was that all the consultants that Wharf appointed directly and third party costs, as well as Wharf's star costs, would be assumed by Wharf. Likewise, if these were UIH consultants or if these were UIH staff, then their costs would initially be at UIH's own cost.

Q And then what happens to the costs?

A And if the three parties eventually come together to do a joint venture, and if that joint venture is awarded a license, then all of those costs initially covered by the shareholders themselves would be paid for by the joint venture company.

Q All right. So if I understand it, that's their paid in capital?

A Only if they eventually invest.

Q Right. All right, now let me--now, following your acceptance of Mr. Schneider's offer, you had a meeting in Hong Kong. Look at Exhibit 324, please.

A Which Mr. Schneider's offer?

Q I'm sorry, the one that's referenced in Exhibit 309, the one that related to the conference call.

A Subject to the clarification I was testifying a moment ago.

Q Subject to whatever clarification, I'm talking about Exhibit 309 and your acceptance of them sending people to help your project.

A Okay. And the next document you want me to look at, Mr. Chase?

Q 324.

A 324. I have it in front of me.

Q Now, this is an agenda prepared by your company; correct?

A Yes.

Q And it's for a meeting over two days among UIH, Wharf Communications and Wharf Cable; right?

A UIH, Wharf Communications--yes.

Q And there's no NYNEX here; right?

A There is no NYNEX here; right.

Q And this is a meeting and a discussion with respect to a number of items, including what UIH would be able to do for Wharf in connection with getting the bid ready?

A This--can you repeat the question? I'm sorry.

Q This agenda covers a number of items, including what UIH can do for Wharf in terms of getting the bid ready?

A Including, yes.

Q Including, yes. Now, look, if you will, at Exhibit 391. Exhibit 391 is the Wharf Holdings board of directors minutes of August 26, 1992.

A Yes.

Q Do you see that?

A Yes.

Q And if you look over, you're the one that's making the report. I'm looking over after a bunch of left out material, it starts out at the bottom, "Mr. Ng added," do you see that?

A Yes.

Q This is a report on the cable project. "Mr. Ng added that a shareholder's agreement with some strategic joint venture partners was expected to be signed towards the end of September, 1992." Do you see that?

A Yes.

Q So you've got strategic joint venture partners, and it's anticipated they're going to sign a shareholder's agreement; right?

A It was at that time, at the end of August, intended that the strategic joint venture partners will sign a shareholder's agreement.

Q The key being that as of this time, you've got strategic joint venture partners; you just haven't signed the shareholder's agreement yet.

A I disagree with that. Until the agreement is signed, they cannot be strategic joint venture partners.

Q That's not what it says, does it?

A Well, it doesn't say that they were strategic joint venture partners as of that date either.

Q Well, Mr. Ng, I'm not going to quibble with you. But what this says is the shareholder's agreement, with some strategic joint venture partners. So you've got two things happening. You've got your joint venture to get your license, and then you're going to talk about a shareholder's agreement; right?

MR. JENTES: Object, Your Honor, asked and answered and arguing with the witness.

THE COURT: Overruled.

THE WITNESS: No, in my view, that is incorrect. There was no joint venture to bid for the license. We were negotiating a joint venture to explore--or rather to invest in the project. But before you can invest in the project, you need a license.

Q (by Mr. Chase) Well, that's a for sure. But if we could talk a little bit about whether you have a joint venture or not, I'm not going to drag out my jury instruction here, but you were definitely cooperating with UIH at that time, were you not?

A We were also--we had also been cooperating with Falcon.

Q At this point in time, you were cooperating with UIH, were you not?

A At this point in time, we were cooperating with UIH, as we were with some consultants. But that doesn't make we were having joint ventures with our consultants.

Q Mr. Ng, you're getting ahead of me here. I just want to take it one step at a time. You and UIH are cooperating towards getting the license; right?

A We and UIH were cooperating towards getting a license, yes.

Q And at this point in time, you're anticipating a shareholder's agreement with UIH; right?

A With UIH and NYNEX, subject to conditions being met.

Q And not Falcon; right?

A And not Falcon.

Q And at this point in time, you're cooperating with UIH, you're anticipating a shareholder's agreement, and UIH is contributing its time, money and efforts towards you getting your license; correct?

A As I was saying earlier, testifying earlier, we were also cooperating with other people at the same time.

Q I don't want to argue with you about other people. I've just got one client in this case--actually, I've got two. I want to talk to you about UIH. And is the answer yes with respect to UIH?

A Can you ask the question again clearly?

Q I can ask the question again. I'll try to be clear.

At this point in time, UIH was contributing its time, efforts and labor toward Wharf getting its license; correct?

A At this point in time, UIH was contributing--at this point in time, end of August, UIH was contributing its time, its people, together with Wharf and Nynex contributing their time, their people to bid for a license. They were taking the same risk.

Q Thank you. Now, let's talk about some of the things UIH is doing, and this is in the pre-license period--pre-application period, I'm sorry. Now, right away, we've got this memo, this is Exhibit 333, and I know this isn't in the jury book. It's in your book.

A 333?

Q 333.

A Yes.

Q It's a memo of August 10, 1992 from Mr. Sears to you, and then that's your handwriting up in the upper right; correct?

A Yes.

Q And you want a copy to go to Mr. Lam, who's one of your employees; correct?

A Yes.

Q And Mr. Pittman, who's UIH's employee; correct?

A One of UIH's people; I don't know whether employee or consultant.

Q All right. But nevertheless, UIH is paying them, you're not?

A I was not. I don't know whether UIH was paying them.

Q Well, I think we would have heard from them by now if somebody wasn't.

A Well, I have no basis; I cannot answer that question.

Q Fine. And the subject is network next steps; right?

A The subject is network next steps two.

Q Okay. And I'm not going to go through this entire document. The point, however, is that in this early August time period, you're referring this to Mr. Pittman for advice; correct?

A I was referring this document on the 10th of August, on or about the 10th of August, 1992 for advice.

Q And that's because you wanted to hear back from Mr. Pittman as to what his thoughts were on this subject?

A I was looking for advice from Mr. Pittman.

Q You were looking for value added to your cable project?

A I was looking for advice.

Q Look over, if you will, please, at Exhibit 334.

A Yes.

Q Exhibit 334 is an August 10, 1992 memo from Mr. Fung to various people, including Mr. Pittman and Mr. Moss. Do you see that?

A Mr. Pittman and Mr. Moss, yes, I do.

Q It's called Financial Review Schedule?

A Yes.

Q Now, you'll notice on that, at least as far as I can see, is there anybody from NYNEX on that thing?

A No.

Q So all you've got there are Wharf and UIH people on this Financial Review Schedule?

A On this memo.

Q Okay. And then--well, this memo is a pretty significant memo because, first of all, financial review is critical for your bid; right?

A A financial review?

Q Yes.

A It is important to the bid.

Q Financial analysis, business plan, projections, that's the guts of a business; right?

A A financial review is important to the bid.

Q All right. And what you've got here is you've got UIH and Wharf people who are going to take a look at it, and you ask down at the bottom, "I would ask that you, in conjunction with your staff, help us to ensure that all the applicable timing deadlines are met." Do you see that?

A Yes.

Q And so you were again requesting of the UIH people certain services with respect to getting your bid prepared?

A We were requesting some services from UIH people by this memorandum.

Q Now, if you'll look please over at Exhibit 393?

A I'm sorry, there is no 393 in my book.

Q Well, there will be one in your hand in a moment. These are not in the jury book. Well, I spoke too confidently.

Well, Mr. Gilmore is getting you a copy of 393. It should be in those white notebooks, actually. Are you there?

A One second. 393? I am.

Q Yes. Now, this is an August 26, 1992 memo from Mr. Pittman to Mr. D'Ottavio, and it talks about--

A I'm not sure that it is.

Q I'm sorry, it's from you to Mr. D'Ottavio. I'm sorry. It's from you to Mr. D'Ottavio; right?

A Right. Stephen Ng, not Bill Pittman.

Q Right. I understand you're not Bill Pittman.

A Okay.

Q To Mr. D'Ottavio. Okay, at this point, I'm not sure of anything, but that's what this memo is; right?

A Yes.

Q Okay. And it talks about--you're telling him, "It was good to talk to you again yesterday." You're providing him some information. And then you say down at the bottom, "Separately, I had a good breakfast meeting with Bill this morning. Among other things, we spent time covering the critical implementation issues, including the recruitment of key executives. We will touch base again when he returns from Taipei and Bangkok next week. Given our very ambitious target, I am anxious that we get this process moving along as quickly as possible. This is perhaps an item to put on the agenda for your visit next week." Do you see that?

A Yes.

Q Now, Mr. D'Ottavio is a UIH employee, isn't he?

A He's a UIH person.

Q Okay, close enough. And as a UIH person, they're the ones who are paying him, you're not?

A I have no basis to--I can say I'm not paying him, I didn't pay him.

Q All right. I take it you're never going to agree with me that somebody is a UIH employee, so I'll have to call them a UIH person. Is that okay?

A That's because I have no basis to agree or otherwise.

Q All right, we'll call them persons.

Now, in that particular provision, he's talking about helping you--you're talking to him on an urgent basis about helping with recruiting key executives for your cable project; right?

A On an urgent basis? Sorry. What do you mean on an urgent basis?

Q Well, maybe I shouldn't have said it that way. It says, "Among other things, we spent time covering the critical implementation issues, including the recruitment of key executives. We will touch base again when he returns from Taipei and Bangkok next week. Given our very ambitious targets, I am anxious that we get this process moving along as quickly as possible."

I guess I shouldn't have used the word urgent. But it does sound fairly important, doesn't it?

A What does sound fairly important?

Q Mr. Ng, this memo is from you to Mr. D'Ottavio about him helping you recruit key executives for Wharf Cable; right?

A This memo is about the recruitment of key executives, and because Mr. Pittman was so often not in Hong Kong, he was not somebody that we could turn to, so I sent this memo to Mr. D'Ottavio.

Q And you wanted Mr. D'Ottavio's help to get you some key executives for your cable project?

A And he was very anxious to help because in the event UIH participated in the project, they would want to know that whoever we eventually appointed to be in that senior position is somebody that they can accept.

Q Well, that makes sense for somebody that's going to be your partner in the cable project. They want to make sure you have the best possible people; right?

A That makes sense for somebody who wanted to be in our cable television project.

Q You mean you're not going to agree with me that they were a partner?

A No, they--well, if you can define the term partner, they were not an equity partner.

Q Mr. Ng, I thought you'd agree and we could all go home.

A I have a longer way to go than you do.

Q And I'm sure you're more anxious than me.

Let's turn to Exhibit 358, please. That's not in the book, I'm advised.

A 358, right.

Q Is it in the book you have?

A It is in my book.

Q Oh, okay. So you've got the real book, the official--all right, now this--I knew if we stayed here long enough, we could bring Ms. Spangler into this. This is a memo from you

to Ms. Ellen Spangler, sitting at counsel table to my right, and it's of August 17, 1992, and it relates to getting her assistance with respect to CNN and ESPN. Do you see that?

A May I read the memo?

Q Please.

(Witness reading exhibit.)

A Yes.

Q I'm sorry, you can--

A No, I didn't--I was not following your question.

Q Well, the first question simply is for you to identify that this is a memo of August 17th from you to Ms. Spangler, seeking advice with respect to CNN and ESPN.

A Yes, this was my memo and I asked Ms. Spangler to provide some help.

Q All right. In the bottom, you say, "Yvonne and Lanny," are those your people?

A Yes, those are our Wharf Cable people.

Q All right. Okay, I'm not going to ask you if they're employees. They're people. Okay, "Yvonne and Lanny are already in discussion with both CNN and ESPN. Where your assistance would be most valuable appear to be in the area of information concerning CNN and ESPN's pricing in terms of supply in other markets which may be relevant to our s. You are probably the best person to give us advice in this regard, and I look forward to hearing from you soon."

Okay, now you're seeking Ms. Spangler's assistance on this matter; right?

A Yes.

Q And you were aware at this time of her extensive experience when she was working at TCI and doing these kind of deals with CNN and ESPN?

A I'm sorry, although Ms. Spangler is in the courtroom, I had not been aware of her background. I was aware at that time that she was the person that UIH suggested we should contact for programming information.

Q It turned out to be a good choice; right?

A Good choice for UIH.

Q Okay. Good choice for you, too?

A Good choice for us? No, she never worked for us. I'm sorry.

Q She didn't provide you any advice with respect to CNN and ESPN?

A No, no, no, she did. She did not work for us.

Q Oh, I understand that. She's a person, not an employee. But she provided you advice with respect to how to deal with CNN and ESPN on pricing issues, didn't she?

A She provided some information. I cannot remember specifically what the information was.

Q Now, let's look over at Exhibit 411. Another voice from behind tells me it's not in your book.

A It's in my book. I have--

Q My legal assistant is a person, not an employee any more. Sorry, Your Honor, I don't mean to--it gets a little punchy at this point in the afternoon. I know, another pro bono appointment.

THE COURT: You're going to be spending a lot of time down at the state prison, just visiting though, so far.

MR. CHASE: I carry my toothbrush wherever I go.

Q (by Mr. Chase) Mr. Ng?

A Yes, Mr. Chase.

Q September 2, 1992 from Mr. Fung to Mr. Ebenbach of Jerrold; right?

A Yes.

Q Now, Jerrold, as we all are painfully aware, is the lead supplier of decoder boxes; right?

A Is the lead supplier?

Q Well, one of the lead suppliers.

A One of the lead suppliers.

Q The one you chose; right?

A For decoder boxes, yes.

Q For the time being, that's the last time you and I will talk about decoders, for the time being.

A Thank you.

Q Now, in this letter, this anticipates a meeting between Jerrold and Wharf, and you're talking about--Mr. Fung is saying--and why don't I put this where everybody can enjoy it.

"In order to facilitate our decision making, we thought that it also would be appropriate to include an engineer from our partner, United International Holdings, as part of the visiting team. However, before we made any arrangements, I thought that I should first check with you to see if the presence of a UIH representative is in any way sensitive to yourselves." Do you see that?

A Yes.

Q And you understood that Mr. Fung was holding out to Jerrold at that time that UIH was your partner?

A He used the language that an engineer from our partner.

Q And you certainly understood, did you not, the value of having UIH participate in discussions with Jerrold?

A I did. The value of that was to enable UIH to participate in our decision process. We did not want to choose a box that our eventual joint venture partner, if they became an eventual joint venture partner, would fundamentally have a problem with.

Q All right. So you wanted to make sure you could satisfy your eventual joint venture partner, and you also knew,

however, that UIH had negotiated and done countless deals with Jerrold throughout the years?

A I did not.

Q I spoke poorly there. Not UIH, but the UIH people who had been at United Cable, you understood that they had related to Jerrold for years?

A I had no idea what kind of decoder boxes they were buying.

Q Is it your testimony that as of September, 1992, you did not know that UIH had an ongoing relationship with Jerrold with respect to decoder boxes?

A It is my testimony that as of September 2, 1992, I had no specific knowledge that UIH had an ongoing relationship with Jerrold for the supply of decoder boxes.

Q All right. Now, you say you had no specific knowledge. Were you generally aware that UIH had been dealing with Jerrold--the UIH people had been dealing with Jerrold for years, particularly Mr. D'Ottavio?

A As of September, 1992, I did not know that.

Q So it's your testimony that you're inviting UIH along to the Jerrold meeting for UIH's benefit, not for Wharf's benefit; is that your testimony?

A Well, no, I said that was one part of it. I was never allowed to finish.

Q Please finish.

A The first part was we were going to choose a paint for our new house, and if we become married, I wanted to make sure that the paint we put in the house is something acceptable to our spouse. The second part was--

Q I don't know how I got into that conversation, but go ahead.

A May I finish?

Q Please.

A And the second part was we knew the UIH principals had been working in the cable market in the U.S. generally, and we did not know whether they were buying from Jerrold or SA or whoever, but we assumed they had expertise in the procurement of decoder boxes.

Q And you shortly learned within this time frame that UIH did have considerable experience with Jerrold, did you not?

A Could you please define this time frame?

Q Well, in the September, October, 1992 time period.

A No, not within that time period.

Q November?

A Possibly, towards the end of the year maybe.

Q Okay, we'll get to the end of the year when we get to the end of the year, but I'm trying to do this a little bit systematically. The point is you're inviting them along as your partner to this demonstration; right?

A Mr. Fung was inviting them along.

Q All right, let me ask you to look over to Exhibit 424.

A 424?

Q Now, Exhibit 424--are you there?

A Yes, I am.

Q This is a memo from Mr. Pittman to you of September 4, 1992, regarding recruitment of key staff; do you see that?

A Yes, I do.

Q And it's regarding our prior discussions regarding the recruitment of key management personnel see that?

A Yes, I do.

Q And then he talks about later on the Phase I recruitment of key senior staff most likely to involve ex-pats and he goes on to talk about various senior staff that could be hired; do you see that?

A Talks about several position; is that what you mean?

Q Yeah. He talks about how you're going to staff your company.

A Phase I recruitment, Phase II, that is the subject of the memo.

Q And if you look over on the second page--

A Yes.

Q -- Mr. Pittman makes a specific recommendation where he says, "At first glance it may appear that we're considering experienced cable staff too deep in the organization. We must remember, however, that we have an incredible wrap-up activity that projects delivery at 500,000 homes past, 100,000 subscribers in a six month period. To expect a green organization to succeed while being managed by a similarly green general manager is well beyond a reasonable expectation;" do you see that?

A Yes.

Q And that was Mr. Pittman's recommendation with respect to how to organize and staff your cable TV company?

A That was Mr. Pittman's opinion.

Q Actually, it was a good opinion, wasn't it?

A Measured against what?

Q Well, you, as the--as the head guy on this thing, did you think it was good--be good advice, measured against what you think to be good advice?

A I was considering the advice at that time.

Q And Mr. Pittman is giving you this advice because he's trying to help you establish your cable company; right?

A He was trying to help me, help us.

Q Okay. Now, let me ask you to look over at Exhibit 677.

A That's another book. Excuse me.

Q This is going to be in the witness book.

A Or is it or is it not?

Q In fact, this may well be in the jury book. No? Oh, and I just heard it's not in either book. Well, that means I'll have to bring a copy. So much for my--. We're doing this to keep Mr. Gilmore interested.

(Laughter)

THE WITNESS: Mr. Chase, 600 and?

Q (by Mr. Chase) 77.

A 77. Excuse me. I'm still looking. 600--no, it's not in this book.

Q Well, okay. Here you go, sir.

A Mr. Gilmore is getting it for me.

Q Oh, okay. Thank you.

A I have it now.

Q All right. Mr. Ng, now look at 677, please.

A Sorry, I mean I have the book now. 677.

Q Right.

A Yes.

Q Now, this is a memo from somewhat later, this is October 29th, 1992; see that?

A Yes.

Q In this case we've agreed that those cross-outs just mean that's the day it was called up on the computer, but that's not the day it was generated; do you understand that?

A Yes, I do.

Q So, okay. We're looking at a document that's during the period now your bid has been submitted and it's pending; right?

A Yes.

Q And you're planning how you're going to respond to questions from the broadcast authority regarding NYNEX and UIH; correct?

A Just reading the memo before I answer that question. Yes.

Q All right. And it goes on to--and this is Mr. Fung's advice and it says, "The points we should bring up in response to the captioned question are as follows: Both NYNEX and UIH have worked with us over the past six months in preparing the pay TV--the pay TV proposal. They have been active participants in all asp cts of business planning, especially in the development and verification of our business plan assumptions." Do you see that?

A Yes.

Q And that's true statements, weren't they?

A That's an oversimplified statement.

Q Nevertheless true?

A It's got to be read in the context in which it is written.

Q Well, I've got the whole document out there. That's the context. True statement?

A True in the context that both NYNEX and UIH had indeed been working with us during that, I suppose six months is a bit of an exaggeration. Of course, UIH didn't start to come to Hong Kong to investigate the project until June, so it could not have been six months, whereas NYNEX had been for much--had been working with us for much longer. And a lot of the work that UIH was doing in the June/July time frame was really investigative work, due diligence, so to speak.

Q Well, says you. Let's look at what this says. It says, "They have been active participants in all aspects of business planning, especially in the development and verification of our business plan assumptions." And that's what Mr. Fung is recommending that you tell the broadcast authority about the role of UIH and NYNEX?

A But that is a generalization, as I said. For instance, UIH never participated in the telecom part and the so-called verification of our business plan, that is very much part of the investigation, the due diligence.

Q Let me ask you, you talk about the telecom part. What you're talking about here is your pending application for cable television; right?

A Yes.

Q And it has nothing with telecom in it, does it?

A This particular bit did not have specific telecom proposals in it, but it did refer to future telecom ambitions.

Q All right. And what was being considered by the broadcast authority at this time was to grant your cable TV bid; correct?

A Yes.

Q All right. And this is a true statement with respect to the role, except for your six months qualifier, with respect to what UIH had been doing for you up to the time of this memo?

A I just answered you a moment ago. That's untrue for the qualification that I said. If you read it in context of how it should be interpreted, UIH never participated in the telecom portion, for instance.

Q All right. I don't think we need to belabor that one. Let me go on to your next point here where it says, "Wharf contends"--and this is what you're going to tell the broadcast authority--"Wharf intends to offer up to 40 per cent of the equity in the holding company of Wharf Cable to strategic partners upon license award;" correct?

A Yes.

Q And this is what you had Mr. Fung tell the broadcast authority; correct?

A This is what we agreed. I don't remember who told the broadcasting authority.

Q All right. But, well, whoever told it, this is what you told the broadcasting authority; correct?

A In response to questions, if there were any.

Q Well, actually, Mr. Ng, you guys volunteered it to the broadcast authority that you intended to bring in your strategic partners, UIH and NYNEX; do you remember that?

A That may have been the case, but I'm interpreting this memo.

Q All right. And was this your intent as of October 29, 1992?

A What was? I'm sorry.

Q Was it your intent as of October 29, 1992, to offer up to 40 per cent of the equity in the holding company of Wharf Cable to strategic partners?

A Yes, subject to the conditions being met.

Q I see. And at this point in time you still had no further information about UIH's financial condition, did you?

A We still had no information to allow us to decide that UIH had the financial capability to invest in the project.

Q And you made no disclosure to the broadcast authority about that, did you?

A No, it wasn't necessary.

Q And with respect to this statement that you've made all the way through this case about how you would invite UIH if NYNEX came in, you never told the broadcast authority that either, did you?

A We never told the broadcasting authority what?

Q That you would only invite UIH in if NYNEX came in or you would only invite NYNEX in if UIH came in?

A We never got into that kind of detail.

Q Now, Mr. Ng, look at Exhibit 550, please.

A That's going to be a different book again.

Q Well, it's probably going to be in the witness book. Probably in the white books.

A Well, it's on the black book, so I have to change my book.

Q And the good book says.

A 550?

Q Yes.

A I have it in front of me.

Q Now, 550 is a letter from you to Mark Schneider transmitting to him or actually advising him that you submitted your proposal on September--this is September 30, 1992. It's from you to Mark Schneider; right?

A Yes.

Q And you're telling him that you submitted your proposal that day?

A Yes.

Q And you say, "I wish to take this opportunity to thank you and the entire UIH team for the valuable assistance that you all

have provided in preparing this, the proposal. We all hope we emerge as winners." Do you see that?

A Yes.

Q And was that a true statement of your--of your feelings about what UIH had done for you up to that point in time?

A I truly appreciated the assistance that UIH provided to us and so I wrote this courtesy letter to Mr. Schneider to thank him at the same time as I wrote courtesy letters to thank other people.

Q Well, you wrote one to NYNEX, too, didn't you?

A I think I did.

Q Why don't you turn the page and let's see what you said to NYNEX.

A Right.

Q This is your letter of the same date to Mr. Paul Duffy at NYNEX.

A Yes.

Q And if we could focus in on that one a little bit. It says, "Dear Paul: Wharf Cable submitted its proposal to government earlier today. I have pleasure to enclose with this letter a full set of proposal together with three copies of the executive summary. Please let me know if you require additional sets. With best regards, yours sincerely, Stephen Ng." See that?

A Yes.

Q Now, if you want to compare the two, you didn't have that second paragraph on the letter you wrote to NYNEX, did you?

A The two letters are not identical.

Q And we will be talking about what NYNEX did, but in summary, isn't it a fact that with respect to your cable bid, NYNEX did almost nothing?

A I disagree.

Q Well, they didn't do enough to deserve the second paragraph, did they?

A I didn't have the--the fact that I didn't write the letter the same way doesn't mean I was not appreciative.

Q You--they didn't get that second paragraph, did they?

A Not in this letter.

Q And NYNEX didn't do anything on your cable bid, did they?

A I have said that's untrue.

Q They didn't do much.

A That's untrue.

Q Well, Mr. Ng, you'd agree with me, would you not, that they didn't do near as much as UIH?

A Whew. You're asking me to value their contribution.

Q Well, you don't have to put a number on it. We'll worry about that when we get down the road here. But--

A So what are you asking me to do if--

Q Well, I'm asking you to--to tell me whether you thought NYNEX did as much as UIH with respect to the cable bid.

A I would need to value that contribution.

Q I tell you what; we'll spare you that at the moment.

Your Honor, I know it's a little early for the recess, but--

THE COURT: But it's about time for you.

MR. CHASE: Yeah, I think so.

THE COURT: All right. Let's take the recess now.

(3: 00 p.m. - Jury excused.)

(3: 00 p.m. - Recess accordingly.)

(At 3: 35 p.m. on March 26, 1997, with counsel for the parties present, the following proceedings were had:)

THE COURT: I'm sorry to be late. Couldn't get off the phone. I'm taking a more exacting interest in trial settings these days.

(Laughter)

MR. CHASE: Not perfunctory any more, huh?

THE COURT: That's right.

MR. JENTES: Sometimes if you ever want to discuss that subject, Your Honor, I have some ideas.

THE COURT: Good. I'd like to hear them if we can.

(3: 38 p.m. - Jury present.)

MR. JENTES: Okay, Mr. Chase.

CROSS-EXAMINATION BY MR. CHASE RESUMES:

Q Mr. Ng, I want to--when we left before the break we were talking about the fact that NYNEX didn't get the second paragraph. I want to talk about NYNEX for a little while here. And I want to talk first of all about the--this idea of a telecom project, okay?

A Telecom?

Q Telecom.

A Sorry. A telecom project?

Q Project.

A Okay.

Q Right. And that NYNEX was going to be your telecom partner; right?

A NYNEX, you talking about '91, '92 time frame?

Q Right.

A Yes.

Q During the time frame of this case.

A Right.

Q Right. And it's a fact, is it not, that your plan was that the two businesses, telecom and cable were going to run as separate businesses?

A Not in the early days, but, of course, the environment changed as we came along.

Q Well, by 1992, I don't know what the early days are, because--

A 1991.

Q Well, okay. Those are the early days, way back then, but in 1992 by that time it was anticipated that you were going to run cable and--and telecom as separate businesses?

A Well, by 1992 it was becoming clearer and clearer that government would be awarding--awarding the licenses as separate licenses. And we had the option of applying for the--the two licenses through the same company or applying for the two licenses through separate companies. And in the end we chose to apply through separate companies for regulatory and other reasons.

Q And that's the way you run today's separate companies; right?

A We have separate management teams reporting to me.

Q Right.

A I'm chairman and pres--and managing director of both companies.

Q They're separate companies?

A For licensing purposes they're separate companies.

Q For bookkeeping they're separate companies?

A Well, because they are separate legal entities, the bookkeeping is kept separate.

Q Taxes are separate?

A Taxes are separate because they're separate legal entities.

Q Okay. Now, let me talk to you about NYNEX. You have testified that the only deal Wharf was willing to consider during this time period that we've been talking about is a three-party deal; correct?

A In the '91, '92 time frame, yes.

Q Well--

A For the--for the cable TV project.

Q And '93 as well; right?

A '93, yes. Yes.

Q Okay.

A For the cable TV project.

Q And it's a fact, is it not, that you never told UIH that it's participation depended upon NYNEX's participation?

A I disagree.

Q Okay. I'd like to show you part of your deposition. Yeah, I'll tell you where we're going with it. The first section--I'm going to show it to you on the screen rather than have you look at it; you can do both if you like--is from page 204, line 4 to 205 line 1.

A May I have the book?

THE CLERK: Volume

MR. CHASE: That would be in Volume I.

THE CLERK: I hand the witness a transcript, Volume 1 dated 19 June 1995.

THE WITNESS: Thank you.

Page 2-0--

Q (by Mr. Chase) Yeah. First one I'm going to look over is 204, line 4 to 205, line 1.

A Okay.

Q Can you locate that?

A Yes.

Q Okay.

(Whereupon, a video tape was played for the jury.)

THE CLERK: Hold on. We need some volume.

MR. CHASE: Hold on a second, we need some volume. I'm going to get some volume on this. You better stay close. Okay. Should I try it now?

THE CLERK: Yes, please.

MR. CHASE: Okay.

(Whereupon, a video tape was played for the jury.)

MR. CHASE: How we doing?

THE COURT: I don't think Jake would have that trouble if it were a basketball game.

(Laughter)

MR. CHASE: That's what he was trying to get on there.

THE CLERK: Make me feel bad.

(Laughter)

(Whereupon, a video tape was played for the jury.)

MR. CHASE: Oh, I'm sorry. I'm sorry. I need to alert you.

This would be 425, line 11 to 426, line 1.

THE WITNESS: That's another book.

(Whereupon, a video tape was played for the jury.)

THE WITNESS: That's another book.

MR. CHASE: I'm sorry. Mr. Gilmore, that's Volume 2 probably.

THE CLERK: Volume 2?

MR. CHASE: Yes.

THE CLERK: Volume 2 is dated 20 June 1995.

THE WITNESS: Thank you. And page?

MR. CHASE: The page on that would be 425, line 11 to 426 line 1.

THE WITNESS: Okay. Thank you.

MR. CHASE: Got it?

THE WITNESS: Yes, thank you.

(Whereupon, a video tape was played for the jury.)

Q (by Mr. Chase) Now, Mr. Ng, I'd like you to turn to page 113 in Volume 1 of your deposition.

A 113. Which line?

Q 113, line 21. And did I ask you these questions and did you give the answers? It's going to be very short.

"Do you recall conversations that you had with UIH representatives during the" --oh, I'm sorry. Wrong line. "Do you recall any discussions with UIH representatives where you

indicated their right to invest would depend upon NYNEX also investing?

"Answer: I don't remember.

"Did you have any discussions where you indicated that the UIH right to invest would depend upon an investment by some telecom partner?

"Answer: I don't remember."

See that?

A Yes.

Q Oh, you know what? I've got to do it again. I'm sorry. It wasn't on the monitor. I'm sorry. Same questions; same answers.

"Do you recall any discussions with UIH representatives where you indicated their right to invest would depend upon NYNEX also investing?

"Answer: I don't remember.

"Did you have any discussions where you indicated that the UIH right to invest would depend upon an investment by some telecom partner?

"Answer: I don't remember."

Now, do you see those questions and answers?

A Yes.

Q And you saw them on the screen?

A I--I--the transcript? Yes.

Q Yes. All right. Now, those were your questions and answers at the deposition; correct?

A Yes.

Q That you have read, that you have modified, that you have signed?

A Yes.

Q All right. Now, Mr. Fung was working with you; correct?

A Yes, from May 1992 onwards.

Q Did he ever report to you that he told UIH that it's right to invest would depend upon NYNEX investing?

A I don't remember he told me specifically that he specifically told UIH to that effect.

Q Let's look at what Mr. Fung said in his deposition, page 391 of Mr. Fung's deposition.

MR. JENTES: Excuse me, Your Honor. I don't believe this is proper questioning. In other words there's no impeachment and, as I understand it, all he's going to do is read something as to what Mr. Fung said or didn't. I don't think that's an appropriate question to Mr. Ng. It may be appropriate to Mr. Fung.

MR. CHASE: Your Honor, I'm simply trying to show whether the communication is being made and Mr. Ng is in charge of seeing to it that that happens.

THE COURT: Well, you can ask him that without showing the deposition. The objection is sustained.

Q (by Mr. Chase) All right. Mr. Ng, I guess we have your answer without the deposition, but let me ask you this. Were you in Court, sir, when Mr. Duffy testified?

A No.

Q Did you hear about Mister--and Mr. Duffy's from NYNEX; right?

A Mr. Paul Duffy from NYNEX; right.

Q And he was NYNEX's man on the scene in the Hong Kong; right?

A Yes, he was.

Q And was it reported to you that Mr. Duffy never had anybody tell him in any way, shape or form that NYNEX's expectation of a right would depend upon UIH investing?

A Mr. Duffy did not tell me.

Q Anybody--anybody report that to you?

A No, but I read it in Mr. Duffy's deposition. Not deposition, testimony.

Q So you've read his transcript and you know that's what he said?

A I've read a portion of the transcript and I did see this.

Q Did you--now, Mr. Van Demark was also NYNEX's man on the scene in Hong Kong; right?

A Yes.

Q And did you see Mr. Van Demark's deposition where he was asked anybody ever tell him that NYNEX's right would depend upon UIH investing?

A No, I have not read this.

Q Let me help you.

MR. JENTES: Again, Your Honor, for the same reason, I don't see what reading or showing Mr. Van Demark's testimony has to do with that.

MR. CHASE: Well, Your Honor--

MR. JENTES: He asked Mr. Ng what he remembers or doesn't and that's the end of it.

THE COURT: The objection is sustained.

Q (by Mr. Chase) All right. So Mr. Ng, you don't know what Mr. Van Demark has to say on this subject?

A No, I--

Q You never talked to Mr. Van Demark, did you? About this subject.

A I have no specific recollection.

Q And Mr. Fung never reported to you that he talked to Mr. Van Demark about this specific subject?

A I don't remember Mr. Fung reporting to me that he specifically told Mr. Van Demark something to that effect.

Q Or Mr. Duffy?

A Or to Mr. Duffy to that effect.

Q Now, let's talk about what NYNEX was doing when UIH shows up on the scene. Now, when UIH shows up in June, 1992, you already had relations with NYNEX; right?

A Yes.

Q And in the middle of July, 1992, we've looked at a document that I'm going to ask you to look at again and that's Exhibit 297, you get a report from Mr. Fung regarding NYNEX and their interest in the cable project?

A Excuse me. Let me find the exhibit.

Q Exhibit 297, it's a July 17, 1992, memo from Mr. Fung to you.

A I have Exhibit 297 in front of me.

Q And you recall this document from yesterday where it has a considerable amount of reference to the fact that NYNEX may not be interested in investing in the cable television project; right?

A Let me see. Yes, I remember I'm looking at this document yesterday and there was a reference to that or something like that.

Q Well, let's look over specifically on the second page where it pretty much says it.

A At which paragraph?

Q Second page of 297.

A Yes.

Q Where it says, "With respect to NYNEX's lack of interest in the cable investment;" do you see that?

A Yes, I do.

Q Now, you have testified that when NYNEX was making these kinds of sounds, you would be, or your assistant Mr. Fung would be faithfully reporting this to UIH; is that right?

A He would have indicated that to UIH.

Q I mean, that--that's important to you that UIH know that if NYNEX is going soft, UIH know about that; right?

A Well, if in Mr. Fung's opinion this was something that had a--that was likely to happen rather than just entirely speculative, I'm sure he would have been very open with UIH.

Q And this occurs just a few days before your telephone conversation where you decide to accept UIH's offer to send people to Hong Kong; right?

A Just a few days before the telephone conversation?

Q You remember the one we referred to earlier?

A I do. I cannot remember the precise date.

Q July 23rd. Does that help you?

A If it's July 23rd, it would be a few days.
Q All right. And then right before that NYNEX is going soft and you guys tell UIH NYNEX is going soft?

A We would have been open and we would have told them whatever we knew or whatever we thought.

Q Okay. And then in the bottom of this paragraph it says, "From a Wharf Cable image prospective we can minimize any perceived weakness in our not possessing a signed-on telco partner by designating NYNEX as a telecom application consultant to our cable project. The cable partners should not have trouble with this so long as the consulting arrangements are not onerous. Another option is to bring in TCI as part of the UIH investment to benefit from their telecom and alternate access expertise." You see that?

A Yes.

Q And so Mr. Fung is clearly anticipating the possibility that you may have cable partners, but you're not going to have a telco partner.

A Mr. Fung was discussing the possibility what if NYNEX did not join the party, so to speak, and he outlined a couple of options.

Q And you would have expected him to faithfully communicate this to UIH as well, that this is one of the possibilities if NYNEX doesn't come in?

A Well, I don't know that I would expect Mr. Fung to tell everything to UIH. He would only tell UIH what he considered relevant.

Q Well, when it says the cable partner should not have trouble with this so long as the consulting arrangements are not onerous, at that time UIH was clearly contemplated as a potential cable partner; right?

A Right.

Q And you would expect that Mr. Fung would be discussing with UIH the fact that NYNEX is going soft and what do we do if NYNEX decides not to invest?

A Well, if he thought it was a--something that was relevant, I'm sure he would have been entirely open with UIH.

Q Do you think it was relevant that NYNEX wasn't going to invest or was going soft on it?

A No, I don't think--I'm not referring to the issue as to whether NYNEX was going, quote, unquote, "soft." You're referring to this other statement or sentence about--

Q Well, let me ask it differently. July 17, 1992; don't you think it would be relevant to UIH that NYNEX was going soft?

A If indeed we believed NYNEX was going soft.

Q And don't you think it would be relevant to UIH how are we going to go forward without a telecom partner? What will we do? And wouldn't it be relevant what Mr. Fung's suggesting here?

A Well, not necessarily in what Mr. Fung suggested. We may have other alternatives. Whatever the alternatives we felt would be most likely, I think we would have been open with UIH about it, as we have always been.

Q All right. And one of the alternatives, the one specifically being discussed by Mr. Fung is not having a telco partner?

A That was one of his suggestions.

Q Now, let's look at Exhibit 300 and that's going to be in the white book. It's also in the jury book.

A It is in front of me.

Q It is in front of you. Good. Now, a lot of these happen in the same time frame so you're going--you're not going to have to shift books.

This is Mr. Fung's July 18th, 1992, Wharf Communications Investment Limited Weekly Activity Report; do you see that?

A Yes.

Q And on potential investors he says, "NYNEX indicated that cable was presently not of interest;" do you see that?

A Yes.

Q And it's got a little check-mark by it; right?

A The check mark; yes.

Q That's your check mark; right?

A I'm not sure. Is it?

Q Well, you would have received this at or about this time, wouldn't you?

A It would have arrived on my desk at or about this time, yes.

Q And you would have expected this information also to be communicated to UIH, that NYNEX isn't interested?

A Again, as I testified just now, if we could verify that this was, indeed, a problem, then we would certainly alert UIH as early as possible.

Q Well, I guess Mr. Fung thought it enough of a problem to put it into his weekly activity report; didn't he?

A Well, he alerted me to the fact that there was this possibility and the important thing for us to do was to immediately find out whether there was, indeed, a problem.

Q Well, let's look at the next one. Look at Exhibit 314, please. This is July 25, 1992.

A Right.

Q And this is Mr. Fung's Weekly Communications Investment Weekly Activity Report, July 25, 1992?

A Yes.

Q And under Wharf Cable it's got partners.

A Yes.

Q "Strong support maintained by UIH and Fox. Discuss potential pull-out of NYNEX. No real concerns." See that?

A Yes.

Q Now, was it your understanding that as of this time there was a potential pull-out of NYNEX?

A I was alerted to that possibility and so we went to get it verified as quickly as possible.

Q And were you alerted to the fact that Mr. Fung took this up with UIH and Fox?

A I think he did take it up with UIH; I don't know about Fox.

Q And were you alerted to the fact that UIH had no real concern that NYNEX was being--was pulling out of the project?

A I don't know about that. As I said, what we did was to immediately try to find out whether that was indeed the intention of NYNEX. That was more important than anything else.

Q But what's important in this trial, Mr. Ng, is the fact that you told UIH that NYNEX was potentially pulling out and they had no real concern; right?

A I don't know whether they had any real concern.

Q Let's look over--well, certainly Mr. Fung did.

A Well, his note says no real concerns; it doesn't say no real concerns on the part of UIH or on the part of Fox or on the part of Wharf or on the part of Mr. Fung himself.

Q So you don't know who he--who he was referring to? Nobody had any concern about NYNEX?

A I can't read anything like that out of context. I don't have the context.

Q Now, look at--look at Exhibit 304.

A Going back to 304?

Q This is one that you did testify to about on direct.

A Right.

Q This is--this is a July 20, 1992, letter--

A Yes.

Q --from Mr. Fries to Mr. Fung?

A From Mr. Fries--yes.

Q Now, I guess it's pretty clear the word got to UIH; right?

A Why do you say that?

Q If you look on page 2 under NYNEX Telecommunications.

A Yes.

Q "Sonjia informed me that NYNEX is re-evaluating the Hong Kong market based upon the proposed changes to the broadcast law." Okay. You see that?

A Yes. Yes, I do.

Q And then it goes on to say, "We have not changed our fundamental view that the pay TV opportunity is a good one. We would like to review with you and Stephen the strategic

alternatives available to us given the government's position and the possible need for a telecommunications partner." Right?

A Yes, I see it.

Q All right. Now, clearly UIH had the message that NYNEX was either pulling out or potentially pulling out.

A According to this letter, yes.

Q It didn't effect UIH at all, did it?

A I don't know what you mean by that.

Q Well, UIH was still enthusiastic about the project, they were still sending people to Hong Kong and they were still working with you.

A They were still working because this report about NYNEX had not been confirmed either.

Q Let's look over at Exhibit 315.

MR. JENTES: I'm sorry. Just before we leave the July 20 letter, could you read the last sentence in the material relating to NYNEX?

MR. CHASE: I could if I had it.

MR. JENTES: Can I read it?

MR. CHASE: No, I'll read it. Put it on the screen.

Q (by Mr. Chase) Last sentence, "On NYNEX, there are obviously other candidates for this role and alternative bidding strategies, i.e. Rediffusion." See that?

A Yes.

Q Okay. Does that change any of your answers?

A Any of my answers? What--any of my answers.

Q Not since you took the stand, but never mind. I withdraw that question. Redo the whole thing.

Mr. Ng, look at Exhibit 315, please.

A 315. Okay.

Q These are your Wharf Communication Investment Limited Coordination Meeting Agenda of July 27, 1992, and it shows that it gets distributed to you; correct?

A Yes.

Q All right. Now, attached to this agenda are the July 20th notes and I want to call your attention to page--page 06896 under "Strategic Alliances."

A Yes.

Q All right. Now, in there you have your committee notes talking about NYNEX may lose interest and it kind of--kind of says more of the same of what we've been talking about; right?

A It says NYNEX may lose interest if GSM is not successful and so on and so forth.

Q And so on and so forth. And they may not be a strategic partner, they may charge a consulting fee; right?

A You're running ahead of me. Sect. 3 1 2, yes.

Q And then it goes on to say on 3.1.6--

A Right.

Q -- "It was agreed that NYNEX adds no value to Wharf Cable;" see that?

A Yes, I do.

Q And that was in the context of your meeting where this is strictly Wharf people present; correct?

A Yes.

Q And was that the consensus of the meeting, that NYNEX adds no value to Wharf Cable?

A Again, you've got to put this in context. As I testified yesterday, this was a time when the results from the mobile telephone bid was about to be made known by the Hong Kong government. And the feedback was that we were a very strong number two, but not number one. And so as I testified yesterday, on our side at least and I suspect on the NYNEX side, we were both going through a jittery period not knowing, oh, my God, what do we do? We had such a great deal of expectation or hopes in this cellular joint venture. We knew we had a good bid and we--we thought we were going to win and suddenly there is this bad news and so we--nobody was too sure what was going on, so this was--this has got to be read in that light. It was a period of some depression, if you like.

Q Was the consensus of the meeting that NYNEX adds no value to Wharf Cable?

A There was some opinion expressed that, well, maybe we don't need NYNEX. I think you got to read that in that

context. I mean, if NYNEX did eventually pull out, it's not going to be the end of the world. I think it was that context.

Q All right. And then it goes on to say that, "Investors like Fox and UIH would actually prefer not to have NYNEX as partners as they were not keen on the telecom business;" you see that?

A Yes, I do.

Q Obviously the people at your meeting reporting the fact that UIH and Fox, at least, were under the impression that they could go forward without telecom at all.

A I cannot make that deduction from this sentence. All right. That's--that is not how I read it.

Q All right. Well, I don't think you and I have to argue about how to read it. I mean, we'll let the jury decide what that thing says, but then it goes on to say in the same set of minutes, "UIH JV structure." And it says, "UIH is still very enthusiastic about the project." Right?

A Yes.

Q And so despite the fact that they were aware NYNEX was going through whatever it was going through, that they were going to maybe pull out or whatever, UIH is still interested and you're glad to have them.

A What, UIH was still interested? We didn't know for sure NYNEX was pulling out. We were also--we continued to be interested as the record will go on to show, so we just needed to find out whether NYNEX was indeed pulling out.

Q And at this point in time, you're a little more than two months away from the bid and you've eliminated every other possible cable TV partner; haven't you?

A By this point in time we were no longer talking to Falcon, but I see TCI ComCast on the agenda here, on the minutes here.

Q Which, of course, you learned was in the Hutchinson camp?

A I don't know whether this was the same time frame or not.

Q Well, what you see is that Emil Fung may--may renew their interest through UIH; that's what you're looking at; right?

A Yes, I'm looking at that.

Q All right. Aside from that, as of this time you're a little over two months from the bid and you've eliminated every cable television company except UIH?

A That--UIH was the only cable television company we were talking to seriously as of this time.

Q Now, let's go on to Exhibit 352, please. 352 is an August 14, 1992, memo from you to Mr. Woo where it says, "At this week's board meeting we touched on the timing dilemma we face with the NYNEX relationship in respect of the cable bid;" you see that?

A Yes.

Q And then the close note summarizes several options and I would appreciate your comment; right?

A And our advice, yes.

Q And our advice. And you prepared this up for Mr. Woo?

A I'm sorry?

Q And you prepared this up for Mr. Woo?

A I have prepared--I'm sorry, I didn't hear the question.

Q This is for Mr. Woo; right?

A This--this is for Mr. Woo. I'm sorry.

Q All right. Now, if you look down at option two.

A Option two. Yes.

Q Option two, "Call a spade a spade. Implicitly acknowledge that NYNEX is really only interested in an integrated cable and telecom project and if there is cable only, NYNEX's interest will be much reduced and their equity participation will not be a matter of high corporate priority; do you see that?

A Yes.

Q And that's what was--that was the truth at that time, wasn't it?

A That was a--one scenario at that time. We were still looking for confirmation.

Q Eventually you did learn that NYNEX was not interested in a cable project, didn't you?

A Eventually meaning when?

Q Eventually in the fall of '92.

A No. Eventually--it wasn't until December 1992 and I would describe it--describe that as winter of 1992 when we learned that the NYNEX board was not ready to make a decision to invest in the Wharf Cable project.

Q At this time, August 14, 1992, now, you have the UIH people on the ground doing the things that you and I talked about before the break. And you have NYNEX in a situation where at least you're of the understanding that their only interest is in integrated cable--is in an integrated project and not cable only?

A That is not what I said. This was one scenario and we needed to confirm whether this was indeed the case. We did not know.

Q And you kept UIH abreast of the fact that NYNEX may not be interested in cable at all?

A We did not know as a fact that NYNEX was not interested in cable.

Q But you kept UIH abreast of the fact that they may not be interested in cable?

A We did not know. We did not know.

Q So I've got to find out what your answer is. Did you keep them abreast of the fact that they may not be interested in cable as of August 14, 1992?

A Well, we did not know that they may not have been interested in the cable project, Mr. Chase. So that was our job to go and find out whether they were or whether they were not.

Q What did you tell UIH in August 1992 about NYNEX's interest in the project?

A I don't have any specific recollection, but I can be reminded by documentation.

Q And in August 1992, UIH was actively assisting you in your bid application, were they not?

Q In August 1992, UIH was doing two things; they were going the investigative work, the due diligence, and they were also assisting us with our cable project.

Q And I won't go back into the documents, but we've covered a lot of that. Let's go to--I'm going to ask you to look at a large document here because we're going to look at parts of it. You testified as to portions of it yesterday. Exhibit 235. 235 is--

A Excuse me. Unfortunately I don't have the document.

Q You don't have it. The reason you don't have it is it's a composite exhibit of Wharf Communication Coordination Meeting Notes, starting in June 1992, and it's a composite consisting of the rest of 1992. I can ask you about a few of them and I just--instead of doing it in bits and pieces, I've just made a composite exhibit.

A Thank you.

Q I'm not going to ask you about all these, just the ones with the line compression decoder sections.

(Laughter)

Q (by Mr. Chase) Joke. Joke. Got you.

Okay. Now--

MR. JENTES: How about these sections on hot gossip?

(Laughter)

Q (by Mr. Chase) Mr. Ng, I'd like you to turn to the August 24, 1992, Wharf Communications minutes.

A It will take me a minute. Sorry. August 24, 1992.

Q Right.

A Minutes?

Q Right.

A You mean 26? August 26 or August 24?

Q Well, they're actually, it says, "Coordination Meeting August 24, 1992," they may be attached to an August 26th agenda.

A I'm sorry. What control number are you looking at?

Q Well, I'll tell you what, why don't you look over at 06878.

A 06878.

Q Yeah.

A To me that is a page out of the notes of the meeting held on August 26 and not August 24th. Are we talking about the same thing?

Q There is a handwritten page number Mr. Bauer points out, lower right-hand corner, page 56. Are we on the same page?

A I'm on the same page, but I wanted to clarify because this came out of a meeting held on August 26 and not 24th, as you stated.

Q Okay. That's fine.

A Okay.

Q Now, it says competition for NYNEX.

A Yes.

Q "Support from NYNEX far from satisfactory so far. Consider other partnership candidates to provide competition or as fall-back. No approach for the time being, but SN to register displeasure with NYNEX, Farina or Duffy, at the next opportunity." Do you see that?

A Yes.

Q Now, did that accurately reflect the way you were feeling about NYNEX at that particular time?

A There were some concerns that NYNEX was not as supportive as we needed them to be.

Q Did you communicate that to UIH?

A I don't know. I don't have any specific recall.

Q Now, UIH at this point in time was still actively assisting you in your bid preparation; were they not?

A And continuing to do their due diligence.

Q Okay. Now, when you say continuing to do their due diligence, anything you know about UIH's activity in that regard would be through Mr. Fung, wouldn't it?

A No, I--I was asked questions by UIH persons.

Q Okay. So you think they were doing both, that they were assisting your bid application and they were investigating to determine whether they'd want to invest?

A Yes, that is my understanding. That was my understanding. They needed to know enough about the project to determine whether they were prepared to take the risk.

Q Okay. And at the same time they're helping your people prepare their bid application?

A The two exercises were proceeding in parallel.

Q All right. Now, let's go over to the next set of minutes and that's--I've got--look--oh, wait a minute.

Go over to September 1st, 1992.

A Right.

Q Now, another week has passed and we've got under telecom, Telecom B Regulation--

A Excuse me. Page--

Q -- paper from NYNEX--

A Excuse me. Excuse me, Mister--

Q --still outstand--

A Excuse me.

Q I'm sorry. Page 62 in the lower right corner.

A 62 right. I'm on that page.

Q And it says, "Paper from NYNEX still outstanding. Support from NYNEX is unsatisfactory. SN to find next suitable opportunity to register complaint with Farina, Duffy." And then it says, "Competition for NYNEX, no action until after September." Do you see that?

A Yes.

Q So NYNEX is still not helping you very much with this project; are they?

A Not as of the date of September 1 of 1992.

Q And, in fact, as you move through September 1992, it never got better.

MR. JENTES: Excuse me. Excuse me. Before you leave the minutes that you're just looking at, could you read under Item--I guess it's on page 61, on the MOU on 2.6.1 and 2.6.2?

MR. CHASE: Yeah, sure. Over on--it says, "MOU target signing date September 5, principal to be upheld, veto power to any minority shareholder in very limited situations, Don Oswald to present Wharf Cable investment proposal to

NYNEX's senior management on September 10, EF to facilitate availability and packaging of information." Do you want me to read any more?

MR. JENTES: No.

Q (by Mr. Chase) Okay. Then it goes on, "Technical cooperation agreement NYNEX, target signing date September 21;" do you see that?

A Yes.

Q In fact, that is what was going on at this time, you were contemplating a technical cooperatior agreement for NYNEX at that point in time, weren't you?

A We were contemplating that, but as you pointed out--as you read in 2.6.1, we were also very clear that we would uphold the principal. This principal amounts to a three-party deal because if it's only two-part deal, then it becomes a veto power.

Q Well, let's talk about that for a second. It's a interesting point, when you say it would become a veto power. If you have a two-party deal with Wharf owning 90 per cent and UIH owning ten per cent, you don't have any veto power over the 90 per cent, do you?

A It depends on how the shareholders agreement is written, which is why the shareholders agreement is so important--

Q Excuse me.

A --in order to protect the interest of the ten per cent shareholder.

Q All right. Let--let's talk about that for a second. It's a little bit of a detour here, but we may as well--we may as well detour.

You talked about a shareholder agreement to protect the interest of the ten per cent shareholder. That's what you just said; right?

A Yes.

Q And that's what you said on direct; right?

A Yes.

Q All right. And that's why when you talk about this super majority stuff, that's for the protection of the minority shareholder; right?

A As well as to preserve a suitable balance between the majority shareholders and the minority shareholders.

Q Because the minority shareholder, if you don't have a shareholder agreement just lives or dies by whatever your Articles of Association say; right?

A I'm not a legal expert, but I would generally have to agree with that.

Q Well, without a shareholders agreement, if you've got a 90/10 arrangement, the 90 per cent shareholder can outvote the ten per cent shareholder every time?

MR. JENTES: Your Honor, I object only in the sense that he asked about a 90/10 arrangement in the absence of a shareholders agreement. I don't know what that is and I think

it ought to be clarified for the witness, so he has an understanding as to what a, quote, arrangement is.

MR. CHASE: I'll be glad to. I'll be glad to.

Q (by Mr. Chase) Let's--we're going to talk about this subject for a minute, Mr. Ng, because you keep talking about the veto power situation.

If UIH bought ten per cent of the Wharf stock, the Cable Network Communications Limited stock, it would be a ten per cent shareholder; right?

A Yes.

Q And Wharf would be a 90 per cent shareholder; right?

A Assuming Wharf kept the other 90 per cent, yes.

Q And in that situation without any further agreements, you would have the parties with a 90/10 ownership interest in the corporation; right?

A Wharf would own 90 per cent; UIH would own ten per cent. The two of them would have 90/10 ownership in the corporation, CNCL, yes.

Q Okay. And with respect to value, let's suppose the corporation's worth $500 million. And with respect to value the ten per cent shareholder would have $50 million of value and the 90 per cent shareholder would have $450 million of value.

You know, I'd appreciate it, Mr. Jentes, if you didn't shake your head for the witness because I want his answers.

MR. JENTES: Yeah. I'm sorry.

THE WITNESS: The answer is no.

Q (by Mr. Chase) Okay.

A And--

MR. JENTES: I'm sorry, Mr. Chase. It's so contrary to every economic principal--

MR. CHASE: Well, we'll call you as a witness at some point, but let me withdraw that question.

Q (by Mr. Chase) We'll get back to governance for a second. We'll come back to this.

Okay. You've got 90/10; right? Wharf owns 90 per cent, UIH owns ten per cent.

A Yes.

Q And what they own 90/10 of is this corporation; right?

A Right. This is the scenario you're describing?

Q Right. And the corporation owns Wharf Cable; right?

A In the same scenario, yes.

Q And Wharf Cable owns the cable TV project; right?

A Again, sure, okay. I take that assumption.

Q All right. So we've got 90/10 ownership of the cable TV project; right?

A 90/10 indirect ownership of the cable TV project.

Q Okay. And in a governance situation, how you would govern this corporation without any shareholders agreement or anything like that, the 90 per cent shareholder would be the one who would be able to elect the board of directors; isn't that right?

A No, the board of directors is elected by the shareholders collectively.

Q I'm sorry. That's right. One share, one vote; right?

A Depending on what the Articles of Association and the law says.

Q Do you know whether the Articles of Association of CNCL are any different than one share, one vote?

A I have--I'm afraid I cannot answer that question without having read the CNCL Articles of Association carefully.

Q Assuming that the 90 per cent shareholder can outvote the ten per cent shareholder with respect to the board of directors, that means the 90 per cent shareholder gets to choose the board of directors; right?

A Assuming they--the 90 per cent shareholder's wishes prevail in a shareholders agreement, then the 90 per cent shareholder's wishes will determine the composition of the board.

Q I'm not talking about a shareholders agreement, I'm talking about--

A I didn't say shareholders agreement, did I? I'm sorry.

Q No shareholders agreement.

A No, I said the shareholders.

Q Just got--the shareholders. I'm sorry. Okay.

A Did I say agreement?

Q Yes, you did, so--

A Oh, I'm sorry.

Q --we'll just strike that.

A Okay.

Q So you got the 90 per cent, they can elect the board. The board runs the company; right?

A The board runs the company.

Q And that's the way things work in normal corporate governance; right?

A That would be the way things work in a simplified model.

Q And if you have a minority shareholder, they have to live with the fact that they're going to get outvoted unless they can reach some other arrangement with the majority shareholder; right?

A That is a legal question. I'm--I'm not a legal expert to be able to answer that question.

Q Well, your understanding of a shareholders agreement is that it would provide some kind of protection from a minority shareholder; right?

A That is not the only purpose of the shareholders agreement.

Q No, but we're talking about this governance issue right now.

A Right.

Q Without a shareholders agreement, the minority shareholder buys in knowing he's going to get outvoted every time; right?

A In a simplified model, yes.

Q And he can't veto anything, can he?

A Well, not unless either the law or the Articles of Association provide for otherwise.

Q Do you know anything in the law of Hong Kong or the Articles of Association of CNCL or any Wharf corporation that allows a ten per cent shareholder to veto any decision by a 90 per cent shareholder?

A I'm not a legal person, Mr. Chase. I'm not able to answer that question.

Q All right. Let's get back to--let's get back to value, the one that Mr. Jentes said was so contrary to all principals of economics.

Let's suppose you've got the cable TV system and it sells, you sell the system for $500 million; okay?

A Who sells the system?

Q The owner sells the system.

A Who's the owner?

Q CN--Wharf Cable sells the system.

A Wharf Cable sells the system. Okay.

Q Okay? And $500 million comes to Wharf Cable; right?

A Right.

Q And the Wharf Cable stock is now worth $500 million owned by CNCL; right?

A You're simplifying it I don't know what else is on the balance sheet.

Q I am simplifying it. This is the only fact I want to deal with at the moment. You've got two shareholders of CNCL, one at 90 per cent, one at ten per cent. You've got $500 million coming in. All other things being equal, what are they going to do with that $500 million?

A I don't know. It's up to the board of directors to decide.

Q Well, wouldn't 90 per cent of it be the right of the 90 per cent owner and the ten per cent to the other?

A No, because the board of directors can well decide to take the $500 million to buy into a cable television network in Chili.

Q Okay. And the value of that becomes corporate value; right?

A Yes.

Q And that's still owned 90/10; right?

A That's owned by the company and the company's indirectly owned 90/10.

Q And everything that the company owns, everything it does with that $500 million, whether it distributes it, invests it, or whatever it does with it, the value of the company is still going to be owned 90/10 by your two shareholders; right?

A The value of the company on liquidation is owned 90/10 by the shareholders.

Q All right. Suppose the company got liquidated; 90/10 shareholders.

A But you can't liquidate a company just like that.

Q Well, I don't think we have to pull--build in every variable; we'll save that for another economics lesson. Will you agree with me to this much? If I own ten per cent of a company and you own 90 per cent and the company liquidates, you get 90 cents on the dollar and I get ten cents on the dollar?

A Again, it depends on the law and the Articles of Association. I cannot answer that question. It's entirely hypothetical.

Q Is there anything in the law of Hong Kong or the Articles of Association of CNCL that would make that hypothetical not true?

A I'm not a legal expert to be able to answer that question, Mr. Chase.

Q Okay. Now, let's move forward a little bit in time and talk about what happens with NYNEX. I guess we all know in this case that eventually NYNEX chose not to invest in the project; right?

A Eventually NYNEX chose not to invest in the project, yes.

Q And then you get to the point in time where you've got the license and that's July--June 1, 1993; correct?

A June 1, 1993; correct.

Q Now, do you recall in that period of time Mr. Duffy going to you and saying that he wanted to consider investing in the project? He wanted to bring NYNEX back into the project?

A In what time frame?

Q At the time of the license.

A I don't think it was at that time. It was a little bit later, late in the year 1993.

Q Now, have you reviewed Mr. Duffy's testimony on this subject?

A No, I did not--I don't believe I have gone to that part.

Q Now, if Mr. Duffy testified under oath that at the time of the license or at or about that time he was wanting to come back in, you wouldn't have any reason to disagree with him, would you?

A I wouldn't want to disagree with him.

Q And Mr. Duffy also testified that he got the distinct impression at that time, at the time of the license, June, 1993, that you were not interested in having any partners.

A That could have been quite true because as of that time, it was the Board's intention not to deal with any ownership decisions until after station opening. And this was at least several months before station opening.

Q So here you got June, 1993, you got Mr. Duffy saying he wants to come back in and you don't want him.

A What I just testified was that this was the time when the company wanted to concentrate on opening the station. I testified a couple of days ago we grew from June 1, 1993, to 31st October 1993, by ten new staff each day, Saturdays and Sundays and public holidays included. So this was a period of tremendous pressure to make sure that we can meet the terms of the license and open the station. If there was no license, the company would have no value, so that was the first thing for us to do, to devote our attention to.

Q Now, we're talking about the license has been granted.

A Sure, the license has been granted but unless we implement it, the license has no value. We've got to meet the milestones which we are required to meet under the terms of the license.

Q Did you disclose to UIH at that time that NYNEX wanted back in and you weren't interested in talking to them?

A I don't remember, but it was not a question of whether we were interested in talking to NYNEX, the question was we were not, at that time, interested in considering--rather in making a decision about this joint venture until station opening.

And that had been made very, very clear to UIH from very, very early on.

Q You didn't tell UIH in the summer of 1993 that NYNEX was knocking back at the door and wanted in; did you?

A I don't remember. Whether NYNEX--first of all, whether NYNEX was knocking on the door is a matter of interpretation. I did not see around that time frame any indication that the NYNEX board had approved an investment by NYNEX in Wharf Cable, assuming Wharf Cable was prepared to go ahead with the joint venture and assuming all the terms and conditions were met.

Q Well, let's go a little bit forward here. Let's look at Exhibit 1340. This is a document you testified to on direct. This is notes of your August--of your December 28, 1993, meeting with Paul Duffy.

A Excuse me. Let me--I'm sorry. 1340?

Q 1340, right.

A Let me find it first.

Q Well, you know, this is one of these exhibits that--

A I'm sorry. It's not in this book.

Q --that has two numbers.

A Oh.

Q And--and maybe--well, I don't--I guess we're going to have to rely on the--on the large book. I'll get it for him.

THE CLERK: It's in the black book, I guess.

MR. CHASE: I'll get it.

THE CLERK: Bottom shelf.

Q (by Mr. Chase) Have you got Exhibit 1340 in front of you?

A Yes. Thank you, Mr. Chase.

Q Now, this is the December meeting with Mr. Duffy, the breakfast meeting?

A Yes, December 28, 1993.

Q And now NYNEX really wants in, don't they?

A How do you come to that conclusion?

Q Well, that's what Duffy's telling you; right?

A That's what Duffy's telling me. You read on the note also says our board had certain concerns about the--the firmness of this interest and Mr. Duffy would re--and Mr. Duffy acknowledged that this time around he would need to come to us with a check in hand, so to speak, rather than just an expression of interest. And in point ten, Mr. Duffy said he would report back to New York our board's concerns, the concerns which I expressed in point 3, and see if he, Mr. Duffy, can find ways to reassure us. And those--and the reassurance from New York was what we were looking for to determine whether there was genuine interest from NYNEX.

Q Well, let me--let me read to you a little bit of Mr. Duffy's testimony and see if it's consistent with your memory of what

he was telling you at the time. This relates to this period of time. And I'm looking at page 1131 of Mr. Duffy's testimony. And the question is:

"Did you have any assurance that your board would approve an equity?

"Answer: I had some. I had--well, I had--

"Like you did the year before?

"Answer: I had a substantial amount, as a matter of fact. The fact of the matter is that about that time, and you can look it up, as Casey Stengle would say, Bill Ferguson was rumored to be retiring and Ivan Seidenberg was going to be the heir apparent to Fred Solano and I wired both of those guys and supported this project. So, yes, I did have information that would suggest that it might be a much different situation when Bill left.

"Question: So this was the--so this time--this time you thought you were right?

"Answer: I thought I was right all along, sir.

"Question: But you had no way of knowing because you didn't take it to the board?

"No, I didn't take it to the board because I didn't get the kind of response that I was hoping from Stephen. Stephen said that he explained his board concerns to me and he did.

"Question: What did he tell you about his board concerns?

"Well, the fact that NYNEX was perceived by the board to be a fair weather friend and that when the promises for approval weren't materializing, his board, and obviously at that level things are pretty black and white, there's no room for gray, say hey, they said they'd do this; they didn't do it. They may be a fair weather friend. I can understand that. I would have maybe perceived the same thing.

"So it's your testimony that in late December 1993, as far as you were concerned, NYNEX was interested in getting back in and Wharf was not interested in having you?

"Answer: NYNEX was certainly interested in getting back in. And I felt that Stephen was being a little bit circumspect. He was being polite. I don't think he certainly didn't send me the signal. The way I read Stephen was, yeah, maybe, but it wasn't a very strong maybe."

You see that?

Do I see that? No, I don't see it. I heard it.

Q Okay. Is that a fair description of the exchange between you and Mr. Duffy at this December 1992 meeting?

A Is it a fair what? Sorry.

Q Exchange. NYNEX wants in; you're lukewarm.

A Well, the--my recall of the exchange is quite clear from Exhibit 1340.

Q Is there anything Mr. Duffy said you disagree with?

A It was a matter of interpretation. He interpreted it from his point of view and my perspective is as recorded on this note.

Q Mr. Ng, the fact of the matter is on October 26, 1992, your company got a recommendation from Mr. Fung that both NYNEX and UIH be dumped as strategic partners; right?

A I'm sorry. What date?

Q October 26, 1993. I'd ask you to look at Exhibit 1293, please.

A Not in this book.

Q Well, it's going to be in--it's going to be in the white books.

A 1293?

Q That's correct.

A Yes.

Q This is an October 26, 1993, memo from Mr. Fung to you; correct?

A Yes.

Q And this is a document that you distributed to Mr. Woo and other members of your board; correct?

A Let me take a look. I may have distributed that to my board.

Q And this is a document where Mr. Fung goes on to talk about what is a strategic partner, who would be good strategic partners, who wouldn't be--

A Sorry. Where is it?

Q Well, I'm trying to summarize the document because I'm trying to make a deadline here, but you stop me if I'm going too fast.

You remember this document, don't you?

A I remember this document.

Q And you remember having asked Mr. Fung to prepare a paper regarding strategic partnership considerations?

A Yes, I do.

Q And you recall Mr. Fung making his own recommendations at this point in time?

A I recall he made recommendations, yes.

Q And this is prior to the station launch; correct?

A This was a few days before station launch.

Q Right. And he's talking about partners--potential strategic partnership candidates; you see that?

A That's on page 2?

Q Page 2.

A Yes, yes, I see it.

Q And then he goes on to talk about NYNEX and UIH and then he puts a chart at the end as to who he would consider and recommend as viable strategic partnership candidates; right? At this point in time.

A Yes.

Q And that would include AT&T, News Corp, British Telecom, TCI, Bell Atlantic, Time Warner, U.S. West, TVB; right?

A Yes.

Q No NYNEX.

A NYNEX is not on this chart.

Q No UIH.

A UIH was not on this chart.

Q And this is a week before Mr. Woo's meeting with UIH; right?

A This was about a week, yes.

Q And this was never disclosed to UIH, was it?

A What was never disclosed?

Q This memo, this recommendation.

A This is an internal document.

Q So the answer is it was not disclosed?

A I don't know. I--I need to read the document before I can answer that question.

MR. CHASE: Your Honor, I think we ought to recess for the day.

THE COURT: All right. Members of the jury.

(4:42 p.m. - Jury excused.)

THE COURT: You'll remember that tomorrow we're going to stop at 4:00

MR. CHASE: Okay.

MR. CHASE: With a little luck, I won't be the one you're talking to at that time.

THE COURT: Oh, that was addressed to all of you.

We'll be in recess.

(Whereupon, at 4:43 the hearing was recessed.)

* * *

(Whereupon, the following is a transcript of portion of the videotaped deposition of Stephen Ng played for the jury.)

Q Let me just make sure I understand your last answer here to make sure we don't have too many negatives in it.

Did Wharf have an intent to allow NYNEX to be come an investor without UIH--

(Whereupon, the videotape was stopped.)

(Playing of the videotape resumes.)

Q Let me just make sure I understand your last answer here to make sure we don't have too many negatives in it.

(Whereupon, the videotape was stopped.)

(Playing of the videotape resumes.)

Q Let me just make sure I understand your last answer her to make sure we don't have too many negatives in it. Did Wharf have an intent to allow NYNEX to be come an investor without UIH becoming an investor?

A No, Wharf did not have that intent in September, 1992.

Q And did Wharf have an intent to allow UIH to become an investor without NYNEX becoming an investor?

A I don't believe Wharf had, in September, 1992.

Q And did Wharf have the intent that neither could become an investor unless the other one became an investor?

A Can you state the question again?

Q Did Wharf have an intent in September, 1992 that neither could become an investor unless they both became an investor?

A I believe that was Wharf's intent.

Q And was that intent disclosed to anyone at NYNEX?

A I don't remember.

Q Was that intent disclosed to anyone at UIH?

A I don't remember.

(Whereupon, the portion of the videotaped deposition of Stephen Ng played for the jury was concluded.)

(Whereupon, the following is a transcript of portion of the videotaped deposition of Stephen Ng played for the jury.)

Q Now, you testified a few moments ago that it was Wharf's intent as of the time of the bid, that it would offer an equity participation to UIH and NYNEX, but not to either one alone; correct?

A Correct.

Q When did Wharf formulate that intent, to the best of your knowledge?

A Fairly early on, but I can't remember precisely.

Q When you say fairly early on, do you mean a matter of days, weeks or months prior to the bid?

A I can't remember.

Q Well, was it before September, 1992?

A I can't remember.

Q Was it a matter of days before September 30, 1992?

A I wouldn't think so, but I can't remember.

Q So you think it was more than just days?

A I can't remember.

Q Was it as much as a week?

A I can't remember.

Q What did you tell UIH about that subject?

A I can't remember.

Q You can't remember discussing that subject with them at all?

A The subject of?

Q The fact that UIH could not invest unless NYNEX invested.

A I can't remember.

Q So as a practical matter, UIH's ability to invest in the Wharf Cable project at the time depended on the approval of the NYNEX Board; is that right?

(Whereupon, the videotape was stopped.)

(Playing of the videotape resumes.)

Q So as a practical matter, UIH's ability to invest in the Wharf Cable project at that time depended on the approval of the NYNEX Baord; is that right?

A I would expect that to be the answer, yes.

Q Now, did you ever direct anyone, or did you yourself ever sit down with UIH and explain to them that until the NYNEX Board approved NYNEX's investment, UIH wasn't goign to be able to get an investment right?

(Whereupon, an objection was made; no foundation.)

A I cannot remember.

Q Did you and Mr. Fung ever discuss that fact, that UIH's right to invest depended, among other things, upon the approval of the NYNEX Board?

(Whereupon, the same objection was made.)

A I don't remember.

(Whereupon, the portion of the videotaped deposition of Stephen Ng played for the jury was concluded.)

(Testimony continued on 3/27/97; Transcript 5212)

(At 9:05 a.m. on March 27, 1997, in the United States District Court at Denver, Colorado, before the Honorable John L. Kane, Jr., U.S. District Judge, with Messrs. Chase and Wilson appearing as counsel for the plaintiffs, and Messrs. Bauer, Jentes, Munson, and Tully appearing as counsel for the defendants, the following proceedings were had:)

THE COURT: We're changing the motto, the "One nation under Guard."

(Jury present.)

THE COURT: Go ahead, please.

MR. CHASE: Good morning, everybody.

STEPHEN NG

having been previously sworn, resumed the witness stand and testified further, as follows:

CONTINUED CROSS-EXAMINATION

BY MR. CHASE:

Q Mr. Ng.

A Good morning.

Q Good morning. How are you today?

A I'm well, thank you.

Q Good. Let's turn our attention back to mid September, 23 1992, and I have talked to you a little bit about the bid case documents and the bid case meeting that you had with the Wharf Communications directors; do you remember that?

A Yes, I do.

Q Now I want to talk about the followup to that meeting, and I'd like you to look in the white books at Exhibit 463.

A I have it in front of me.

Q All right. Exhibit 463 is--and I believe this is--is this in the jurors' notebook? No, it's not in the jurors' notebook. Okay, so we'll keep this on the screen. This is the Wharf Cable bid case presentation, notes of meeting from 15 September, and it's issued raised by the chairman after the presentation. Right?

A Yes.

Q Okay. Now, you've reviewed this document? You've seen it in the course of the trial here?

A Yes.

Q Now, if you notice over on the risks associated with UIH, the chairman mentions, "UIH risk, no balance sheet, SN to revisit UIH participation with a view to minimizing franchising and other risks." Do you see that?

A Yes, I do.

Q And then over on the last page of the document, it comes back to UIH again under partnership issues, in fact, the only partnership issue, and that is that, "In view of the funding and balance sheet risks, should we start to call upon equity from UIH first? SN to think of contributory strategy." Do you see that?

A Yes.

Q Now, there was no partnership issue with NYNEX, because in the bid case, NYNEX was not posed as someone who would be a partner at the time of the bid; right?

A In the bid case presentation, the position as of the 15th of September, which was--that's right, 15th of September, 1992, the date of the bid case presentation, the position, not the recommendation, we talked about this yesterday, the document that we put to the board was a position and not a recommendation, and at that time, the position was we did not expect NYNEX to be able to come in as an equity partner by the closing of the bid.

Q And so if they didn't come in as an equity partner, they may never come in as an equity partner. It all depended on whether NYNEX's board approved it; right?

A It didn't all depend on just whether NYNEX's board approved it. It depended on a number of other conditions as well.

Q Well, in the first instance, though, you were looking to see whether NYNEX's board would approve; right?

A We were as of the 15th of September, 1992 waiting for NYNEX's board to approve. And then there were other things we were waiting for. We didn't have a shareholder's agreement in final form, and so forth.

Q And as of September 15, 1992, it was your position, I believe you used the word, that UIH would come in as a 10 per cent equity partner and NYNEX would not come in unless or until they got their board approval sometime after the bid.

A Let me clarify. It wasn't our position; it was the position of the facts as of the 15th of September, 1992.

Q The position of the facts?

A That's correct.

Q And the facts as laid out by you and your group in the bid case presentation to the WCIL board?

A That is correct. It was the position of the facts as of the 15th of September, 1992.

Q Okay. And if I can understand what you're telling me here, the position of the facts were that UIH would come in as an equity investor by the time of the bid, but NYNEX wouldn't?

A No, the position of the facts as of the 15th of September, 1992 was that the NYNEX board was not in a position to come to a decision before the 30th of September, 1992. The negotiators on behalf of Wharf and on behalf of UIH had

conducted a fair amount of negotiation. They had reached agreement on a number of points, but there were a number of very, very critical, very important open points which Mr. Fung testified to last week when he was in this courtroom, and that was the position at that time. And so we reported back to the board on the 15th of September that position.

Q Okay. Now, just so I can be clear on this, is it your testimony that you were not recommending UIH as an investor to your board in mid September?

A We were not recommending UIH because we had no deal to recommend to the board at that time. The recommendation could not have been complete.

Q Did you tell UIH that you weren't making a recommendation in mid September?

A We--in this time frame, what we did was we went to the board and we reported to the board what the position was. We were not in a position to recommend UIH yet because there were many open points, and we had not resolved those open points, the critical governance issues and liquidity issues that Mr. Fung has testified to.

Q Now, Mr. Ng, I don't want to belabor this, but your bid case presentation doesn't have a single open point in it, does it?

A Let me look at it again.

Q Look at Exhibit 465.

A Exhibit 465, this was the so-called bid case presentation, and in this book, there are--there's a portion of that presentation.

Q Right, the portion that pertains to the partnership issues?

A Right.

Q Okay.

A It sets out some of the broader terms. It doesn't set out all the terms. And it also sets out some of the terms to which agreement had been reached. There were some open points which were not spelled out here.

Q Well, let me call your attention back to the exhibit we've just been looking at, 463, where it says partnership issues. And it looks like the only one the chairman had is, "In view of funding and balance sheet risks, should we start to call upon equity from UIH first? SN to think of contributory strategy."Do you see that?

A I see that.

Q So the chairman's concern is your one equity partner, UIH, and calling upon their equity first; right?

A That was the chairman's overriding concern.

Q All right. And the chairman doesn't say a single thing about the fact that you may have one partner and not two, does he, not a single thing in all of his comments in this document?

A No, that was his overriding concern. If we couldn't solve that problem, we didn't have to deal with the others.

Q Show me where it says that in this document.

A It doesn't say overriding.

Q It doesn't say it at all.

A It doesn't say overriding. That doesn't mean that was the only concern.

Q Mr. Ng, this document are the notes of your chairman's concern from the bid case presentation. You show me and the jury somewhere on this document where Mr. Woo expresses a concern that you may have one partner and not two. Take your time.

A If you say there is no such statement in these minutes, I will take your word for it.

Q Let's go on to the next document. Let's look at Exhibit 473. This is the document that you prepared at the chairman's urging, the pros and cons memorandum. Do you remember that?

A Yes.

Q And this was prepared by you as a result of that meeting, as to whether you're going to have UIH as an owner along with Wharf, as a sole owner--I mean, not a sole owner--Wharf and UIH as the sole partners. That's what the pros and cons memo was for; right?

A What was your last comment? The sole owner?

Q The pros and cons memo was done to determine whether, for purposes of the bid, you should have UIH as an owner; right?

A This memo was written to consider two options; one option for Wharf to own 100 per cent of Wharf Cable, and the 10 per cent.

Q Right. And when you talk about the pros and cons on the body of the document, Exhibit 473, and you talk about the ownership 90/10, Wharf/UIH down in Option 2, do you see that one, ownership 90/10, Wharf/UIH technical cooperation agreement, but initially no equity for NYNEX; do you see that?

A Yes.

Q All right. Now, under that consideration of the pros and cons of that option, there's not a single word in there about how to do a partnership with two partners rather than three, is there?

A That wasn't relevant, because we knew very well, as of this time frame, that NYNEX was not able to come back to us with a board approval by the 30th of September, 1992. So that was not an option that was available to the parties.

Q That's not my question, Mr. Ng. Listen to my question.

You're analyzing here the pros and cons of having a 90/10, Wharf/UIH partnership, and you analyzed the upsides and the down sides of doing that, and not a single one of the negative features is the idea of having two partners instead of three?

A I just answered the question. No, because that was--the three partner scenario was not available to us as of that time. There was no point in considering it.

Q Let me ask the question differently. You don't consider as one of the negative possibilities of having UIH in there, the issue of this super-majority, or corporate governance, do you? That doesn't come up in your analysis of whether to

have UIH as a partner in the deal, as a sole partner with Wharf?

A Well, again, Mr. Chase, we have to read this in context. That is very, very important. If you look at the first option, we don't talk about three partners.

Q Mr. Ng, stay with me a minute. The first option talks about Wharf owning the whole thing; right? No partners at all; do you see that?

A Yes.

Q Now, that's the option Mr. Woo chose; right?

A Yes.

Q Now, the option, which is the other option that you presented in your memo, Option Number 2, was that Wharf own 90 per cent and UIH own 10 per cent; right?

A Yes.

Q And that NYNEX have a technical cooperation agreement; right?

A Yes.

Q And under that proposed option, you have points A, B, C and D, wherein you attempt to analyze the ups and downs of having UIH as a 10 per cent partner; right?

A Yes.

Q And there's not a single word in there about the difficulty of corporate governance or super-majority with two partners as opposed to three?

A That was assuming those issues can be overcome. It doesn't deal with every detail in this document.

Q Look over, if you will, please, at Exhibit 484.

By the way, Mr. Ng, you mentioned a moment ago--before you go to 484--you mentioned a moment ago the point that the parties had several outstanding issues to negotiate. I'd like you to look at Exhibit 477, if you would, please, before we go to 484.

A 477?

Q 477. And, you know, it might be Mr. Gilmore might have to get the black books on that one.

A No, it's in the white book.

Q It's in the white book? Okay.

Okay, you got that?

A Yes.

Q Let me highlight a sentence of it for you. This is Exhibit 477. It's a memo from Mr. Fung to Mr. Don Oswald, and it talks about--and it's September 16, 1992, talks about the status of the discussions. And I've probably over highlighted here, because I've got a big marker. But basically in the middle of the first paragraph, it talks about the draft document that's on the table at the time, and it says, "UIH is in substantive agreement with all the terms, save for our

resolution of procedures for going forward with Wharf Telecom." Do you see that?

A Yes.

Q Was that your understanding of the status of UIH at that time with respect to the negotiated terms?

A No.

Q So you believed that there was more disagreement than Mr. Fung represented to Mr. Oswald?

A The report that I was getting from Mr. Fung was that there were still a number of very important outstanding points.

Q Can you think why he would tell you one thing and Mr. Oswald another thing.

A I don't know. I cannot--I have no basis, and Mr. Fung has testified that there were many open points.

Q All right. And Mr. Oswald, just so we can recall, he was one of NYNEX's representatives?

A Yes.

Q All right. Now, turn back to Exhibit 484, please.

MR. JENTES: Before we leave TX-477, which is the memo to Mr. Oswald, may I read the last sentence in the paragraph that you just referred to? "I will have a later discussion today with Stephen to reconcile our positions over a super-majority approval of license award and/or business plan."

I won't read the next paragraph in entirety, which goes through a lot of other matters. It closes, however, "As for the MOU, the only other substantive change will be a reference to liquidity proceedings after a certain time period. We are not opposed to the thought, so long as there are no absolute rights to the remaining shareholders, and the proceedings are undertaken on a best effort basis."

Then he continues, "I will have Tim send drafts of both agreements to you office in Hong Kong, as well as by Fed. Ex. to White Plains. Please let me know if you would prefer alternative arrangements."

Q (by Mr. Chase) Now will you look at Exhibit 484, Mr. Ng?

A Yes.

Q Now, Exhibit 484 is your chairman's mark-up of Exhibit 473. You've sat through court and you've seen this document and you've heard testimony about it; correct?

A Yes.

Q Do you remember receiving this back from your chairman with his markings on it?

A Yes.

Q Now, just so we can review the high points of this document, and I'm not going to ask you to repeat testimony that we spent time with, but I want to cover a couple of things. First of all, your chairman is expressing concerns about your analysis of the pros and cons that we just went through; correct?

A He made a number of comments.

Q And those comments are an expression of his concerns and his views; correct?

A Those comments relate to--yes, they were concerns in respect of certain statements or certain sentences that I wrote.

Q All right. Now, just so we're clear on this, I don't see anything that talks about the fact that you have to have two partners instead of one. Is there any mention of that in Mr. Woo's notes?

A That was not a focus of this note. You have to read it in context.

Q Well, again, I won't argue with you, but it looks like one of the contexts is the analysis of having a two party arrangement. That's Option Number 2; right?

A This was a situation where we were comparing one option of 100 per cent ownership and a second option of a 90/10 ownership.

Q Right.

A Only. Just those two.

Q I understand that.

A And it's got to be looked at in that context.

Q I just don't understand why we can't communicate here.

When you're analyzing the 90/10 situation, that's a two partner situation; right?

A 90/10 would be a two partner situation.

Q Yes. And none of the analysis by you or Mr. Woo raises the issue of the difficulty of corporate governance or super-majority with just two partners, does it?

A Again, we have to read it in context. This was examined in the context of submitting the bid, for the bid, how would government interpret a 100 per cent, how would government interpret 90/10.

Q So all your thinking was just for the bid; it had nothing to do with the business reality?

A In this context, this particular document. That's why--

Q And so this has nothing to do with your particular business reality then?

A No.

Q Okay.

A The bidding was very much a part of business reality. That's what I mean; the bidding was very much a part of business reality.

Q When you say it's for the bid, are you saying that it's your intention to get something for the bid that is the business reality, or are they two separate things?

A We were focusing by this memorandum on one aspect of business reality. Business reality is very, very broad. The one aspect we were focusing on in this memorandum was one aspect of it, namely, how to do the bid.

Q Well, let's look at a couple of other features of this. One thing the chairman seemed to reject was the idea that UIH's funding would be conditional; right?

A Right.

Q In fact, that's what he does in the first sentence when he says, "No, no, no, we don't accept that, UIH funding conditional," right?

A Right.

Q Now, this is September 17--or around September 15th, 16th, 17th, in that time frame, 1992, and you have presented the chairman with a document that says UIH needs to have conditional--needs to have its participation conditioned on funding; right? That was in your pros and cons memo?

A Can you ask the question again?

Q Yeah, it was a lousy question.

In your pros and cons memo, Exhibit 473, the one your chairman bled on here, you tell him that UIH's funding--UIH's participation is conditional on its being able to raise the funds; right?

A Yes.

Q And as of this date, that's what you understood UIH's requirements, because of their financial situation; right?

A As of that day, that was the best assumption I could make, because I had no better financial information about UIH.

Q As a matter of fact, UIH was telling you that they would be involved in the project contingent upon them being able to get the funds, because they didn't have $40 to $50 million sitting in their bank account; right?

A That was--if that was their financial position, that was their financial position.

Q Well, that's what they told you; right? And that's why you put that in the memo.

A I don't want to dispute that point. It was in that general time frame.

Q And so there were no secrets about this, that UIH's participation was going to depend on it being able to raise the money. It didn't have the money that day. There were no secrets about that; right?

A No decision as of that date had been made for UIH to participate as an equity partner. No decision had been made ever.

Q I didn't ask that question. I'm asking about secrets. There was no secret about the fact that if UIH was going to participate, it needed an opportunity to raise the money. There was no secret about that, was there?

A From this time frame on, there was no secret. But prior to this time frame, we kept asking and they kept hiding. They hid the information from us.

Q Mr. Ng, they hid information from you? Look at the first sentence of your memo.

A I said up to this point. Up to this point.

Q So you mean on September 16th when you wrote this memo, you find out for the first time UIH is ready to commit, but its funding capacity is conditional on raising capital from its investors? Are you testifying that you just find that out in mid September?

A A couple of days before we went to the board with a bid case presentation, we were still asking UIH, and I believe I saw a document, I testified to a document either yesterday or the day before in which Mr. D'Ottavio expressed very clearly to his people in Denver that we were waiting for financial information from UIH. We had no idea how much financial strength UIH could bring to this so-called party.

Q Mr. Ng, we all understand that you've watched the testimony, you've heard the testimony, you've looked at documents, and now you've got things you want to say. But, Mr. Ng, under oath, is it your testimony that you didn't know as far back as January, 1992 that UIH's financial capability was not satisfactory? Is that your understand under oath?

A I testified yesterday, Mr. Chase, under oath, that as of January, 1992, we did not know enough about the financial position of UIH, and that is why we kept asking.

Q So here you've got a situation where now you go into July and August, 1992, you've got somebody that's going to be your strategic cable television partner on the most important bid; right?

A On the most important bid?

Q Well, you've got to get television before you can get to anything else. Leave out the most important. You've got UIH, it's an important piece of your puzzle; right?

A UIH was an important piece of our puzzle; is that the question?

Q Yes.

A UIH was a puzzle, yes.

Q I see. So you get into July and August, 1992, they're a puzzle, you don't know anything about them, you don't know about their finances?

A We didn't know their financial position.

Q And at that point in time, they're the ones that you are going to your board with and I think you used the word position, the facts position themselves that UIH is going to be your cable partner?

A I'm sorry, what was the characterization?

Q UIH is going to be your cable partner; that's the position you stated to the board?

A No, I testified again, ever since the beginning of 1992, we were not clear what financial position UIH was in. We kept asking that question and the answer was we'll get the information to you. Don't worry. We will have money. And we kept asking and we kept asking. We kept asking until a couple of days before this memo was written to Mr. Woo, and then the information came.

Q Well, I'll tell you what, Mr. Ng, let's start then with this memo, where it says their capacity is conditional. You surely understood it by the time you wrote that memo; right?

A Yes, shortly before I wrote this memo.

Q All right. And Mr. Woo says no, that's not going to fly. We can't do a deal that way; right?

A We can't do a deal what way?

Q He says, "No, no, no, we can't do conditional funding."

A He said, "No, no, no, we do not accept conditional funding."

Q And if you're going to get in this deal, you've got to have your 40 to 50 million bucks right up front?

A That's not what he said.

Q Well, is that your understanding of what he meant?

A No, he said, "No, no, no, we don't accept that. We don't accept conditional funding."

Q All right. So what does that mean? That means if you're in, you've got to have your money and you're ready to go?

A That means it's unconditional; it's clean. It's got to be a clean commitment.

Q All right. And so that's Mr. Woo's position, and as far as you know, that never changes; right?

A Never changes in what time frame?

Q From then until the end of 1993.

A As far as I can recollect, no, it never changed.

Q Okay. Then the next thing that we get out of this particular memo is that Mr. Woo is telling you, with exclamation points, to get expertise in cable television from UIH; right? That's on the second page of the memo. "Acquire technical expertise, Wharf/NYNEX, Wharf/UIH on cable T.V." Do you see that?

A Yes, I see it.

Q All right. And that was your instructions from Mr. Woo; right?

A Instruction to do what?

Q Acquire technical expertise, Wharf/NYNEX, Wharf/UIH on cable T.V.

A No, that was not my instruction to--it was not Mr. Woo's instruction for me to acquire technical expertise, not at all.

Q It doesn't say that?

A No, that's not what it means.

Q It means something else?

A It means that Points 1, 2 and 3 on Page 2 was his view as of the time of his writing that down of how the bid should be written.

Q You're interpreting this language right now as you sit here today?

A That's how I interpreted it when I saw it.

Q You didn't discuss it with Mr. Woo, did you?

A I don't remember whether I did or not. But I've worked with Mr. Woo for a very long time. I've been a very loyal staff of his.

Q Well, the point is he hands you this document, and this is what he wrote; right? "Acquire technical expertise, Wharf/NYNEX, Wharf/UIH on cable T.V."

A Yes, this is what he wrote.

Q And then he goes on to say, "Have Jv partners. We may invite them to invest." Right?

A Yes, that's what he wrote.

Q He says have joint venture partners, and those joint venture partners may be invited to become investors, and that's what he's telling you; right?

A What he was telling me was through this structure that we were discussing, we would have joint venture partners in the management companies--in the management companies, but not in the ownership company, in the investment company.

Q He's saying first, you have joint venture partners, and then you may invite those joint venture partners to become investors; right?

A First, we have joint venture partners in the management companies, and then we may invite them to invest in the investment company.

Q And that's how you--

A Two layers of companies.

Q All right. But you start with a joint venture first of all with a partner; right?

A If we went ahead.

Q All right. Now, the memo concludes, at least the upper portion of it, where he tells you--where it says, "If UIH fails to complete its funding," and then he writes in bold with an exclamation point, "they will fail." Do you see that?

A Yes.

Q And he gave you this document; right?

A Yes.

Q And you respect the judgment of your chairman; correct?

A I don't know whether it's a judgment.

Q "They will fail."

A Right.

Q That's what he told you?

A No, that's what he wrote.

Q Got me. You're right; he wrote that, and he put an exclamation point next to it.

A Right.

Q And you got it?

A And I got his comment back, yes.

Q You got the whole thing?

A I got the whole thing back, yes.

Q All right.

A But you have to interpret it. My interpretation--

Q Go ahead, interpret it.

A My interpretation was we have to assume the worst case, if they fail.

Q Mr. Ng, your interpretation is based on the fact that Mr. Woo says that this is now his interpretation, so it's become your interpretation; right?

A No, not at all. As I have testified, I have worked with Mr. Woo for almost 20 years, and I know how we communicate.

Q So when you see something come back that says, "They will fail," exclamation point, what he's really telling you is let's assume they will fail.

A Yes, in this context.

Q And then what?

A Well, that was the question he was asking, and then what, what if they fail, if they fail, and then what? We would not be in a good position.

Q Where does it say that?

A It doesn't say that. That's why I say it's my interpretation. I have worked with him for a very long time closely, almost 20 years, and I know the way the style that-- his style. I know his style.

Q All right, Mr. Ng, just to put a fine point on this, you never did discuss this with Mr. Woo, did you?

A I cannot remember a specific discussion.

Q Look, if you will, please, at Exhibit 485. Exhibit 485 is a September 17, 1992 memo from you to Mr. Woo. the way, Mr. Ng, let me, before I put that up here, let me back up one second. When you say you knew nothing about UIH's finances, UIH's finances, in fact we looked through the course of this trial at the Arthur Anderson financial statement, Exhibit 13, that you certainly had long before mid September, 1992, didn't you?

A I already testified yesterday the financial statement from Arthur Anderson were valid as of the 31st of December, 1991. Over half a year had lapsed between the 31st of December, 1991 and the time frame of September, 1992.

Q So in that period, when they're showing at the end of 1991 that they have a million dollars net worth, and then you're in the summer of 1992 and they've shown you nothing different, you don't have an understanding of the fact that they don't have $40 to $50 million sitting in the bank?

A Well, first of all, as I testified yesterday, anything could have happened in the eight or nine month period. Secondly, the financial statement, I don't know when it got to us. It

could have been September. It could have been earlier. I don't know when it got to us. But we kept asking and they kept hiding the information.

Q When you say anything could have happened--

A I'm sorry?

Q When you say anything could have happened, the company finishes 1991 with about a million bucks of net worth?

A Yes.

Q And you're talking to them in June of 1992?

A Right.

Q Now, what do you think they're going to do? Win the Nobel Prize for finances in the few months? I mean, where are they going to come up with that kind of money? And if they did come up with it, why wouldn't they tell you about it?

A Well, I think you're making some suppositions here. In June, 1992, we did not know at all how much money they had in the bank as of the end of 1991. We did not know at all.

Q Well, but we won't go back into this. Nevertheless, you continued to talk to them. You made them your strategic partner, and the whole bit. But we'll deal with that later. Let's talk about Exhibit 485.

Exhibit 485--

MR. JENTES: Excuse me. Before we leave 484, I wish I could read this, but unfortunately I can't. But in any event, on the first page of this document with all of Mr. Woo's notes on it, there's Item 3, which is opposite the conditional sentence, and it seems to say, "If fail, we will be seen as we fail, due to project. Risk too high !"

Q (by Mr. Chase) Did Mr. Jentes read that correctly, as far as you can tell?

A My copy isn't complete. I don't have the full margin.

Q Well, I think everybody's copy is incomplete, and that's what Mr. Woo is talking about about fail on that particular page; right?

A Yes, because the point he was making was if UIH fails to get funding subsequently, the public will perceive our project to be a bad project; because our project is a bad project, UIH cannot get funding.

Q Okay. And so he--

A So that's a risk he did not want to take.

Q Right. And so he says if they fail, this is what's going to happen. And then on the next page, he says they will fail.

A No, what he was saying was we have to make our worst case assumption; if they fail, then the consequences would backfire on us, and it was a risk that we were not prepared to take.

Q All right, Mr. Ng, I think we're just going to let the document speak for itself for a while, because you and I

could probably argue for days about what Mr. Woo meant. But why don't you look at Exhibit 485.

Exhibit 485 is a memo from you to Mr. Woo of September 17, 1992. It's a proposed structure that you're going to have with respect to UIH and NYNEX as investors; right?

A Yes.

Q All right. And if you look at the proposal that you made--all right, this is your proposal based upon Mr. Woo's comments; correct?

A This--previous comments, yes. And then he's got some more comments.

Q Now, you've come back in your proposal, this is like the next day, and you've got a proposal here where you've got an ownership and a management structure; right? You've got--why don't you describe to the jury what you've got in the top portion of this document above "Internal consumption only." Describe to them how that works.

A Okay. In Points 1, 2 and 3, the proposal was to form two separate groups. One group would be called the--one group would be the investor group, and the other group would be a separate management group. The investor group, that is, the group that would invest the $500 million in building the cable T.V. system in Hong Kong, would initially be 100 per cent owned by Wharf Communications. So Wharf Communications would make a $500 million commitment to Hong Kong government. And if the bid, if Wharf Communications' bid through Wharf Cable is successful, then we would consider inviting shareholders in the management group, the separate management group,

second group, to take up ownership in the investor group, in other words, sharing part of the $500 million risk, investment risk, up to 40 per cent, timing and so on to be determined in the future.

The separate management group, there will be a total of two separate management companies. The first management company would be formed with NYNEX and Wharf Communications would own more than 50 per cent of that company, so that we would have majority, NYNEX would have minority. A second management company would be formed with UIH. Again, Wharf Communications would have majority and UIH would have minority. And these management companies would provide service and expertise to the investor company, the $500 million capitalization company that I was talking about.

Q So that's how that was supposed to work? And then the investors may be able to buy into this project?

A Then the investors at some point in time, and subject to conditions and so forth, may be able to buy into the investor group.

Q All right. At some point in time, subject to conditions, may be able to buy into; is that right?

A Yes.

Q All right. Now, all three of those things are always the case. It's always at some point in time, subject to some conditions, may be able to buy into; right?

A What do you mean always?

A Well, every time you talk about a UIH investment or a

NYNEX investment, it's always at some point in time, subject to some conditions, and whatever the third thing was, whatever the court reporter can't read back because we don't have a court reporter any more. But it's always subject to those kinds of things; at an appropriate time, subject to our conditions, may be able to invest.

A We have to talk about time frame. Not today, for instance.

Q Not today?

A Okay, so let's look at time frame.

Q All right, I understand you're not going to be inviting UIH in today. But we're talking about generally at that period of time. That's right?

A Generally.

Q All right. Now, internal consumption only is the lower portion of the document, and in the lower portion of the document, you propose, in UIH's case, their participation is conditional upon proof of financial capacity within 30 days from license aware. Do you see that?

A Yes, I see it.

Q And that's what you were proposing to the chairman; another UIH conditional participation?

A That is what I proposed to the chairman, yes.

Q Because you knew perfectly well that UIH would have to have the to raise the funds?

A By this time, yes, I did.

Q And this is following Mr. Woo having said on the same point, "No, no, no," you're coming back again saying, well, with them, it's got to be conditional, and he says no again; right?

A Here?

Q Yes.

A That's right. He said no again.

Q All right. Now--

A But read it in context.

Q Well, you read it in context. I'm reading the words. You tell me.

A Good. This document is a followup document to the so-called pros and cons document that we saw a moment ago, and the focus of these documents was on the bid, what to say in the bid. And so when it says internal consumption, there's nothing sinister about that. What it meantt was this--the internal consumption is something that among the ghree companies and their staff, we would share, that was the information, if approved, that is what we would share.

Q Well, I'm sorry. First of all, I don't mean to imply anything sinister by the fact that it's internal consumption. But this is what you were proposing be for the bid, and this is what you were proposing would be the deal; right?

A For the purpose of--yes.

Q Well, when you say for purpose of the bid, were you going to put the bid out and then change the whole deal?

A No, the one, two and three is for the purpose of the bid.

Q And then for internal consumption, this is how your deal was going to be; right?

A This was the proposal.

Q For the deal?

A For the deal, yes.

Q UIH's participation conditional on proving financing ability 30 days after license award?

A Yes, that was the proposal.

Q All right. And then Mr. Woo didn't like it?

A No, he did not approve it.

Q No good for the bid; no good for Wharf.

A He did not approve it.

Q All right. Now, let me ask you to look at Exhibit 571 for a moment before we get back to what Mr. Woo did approve.

A That's another book.

Q White book. This would be in the jury's book.

A Exhibit 571, Mr. Chase?

Q Exhibit 571, please, yes.

A Thank you. I have it.

Q All right, 571 is a memo from Mr. Fung to you of October 6, 1992; correct?

A Yes.

Q Regarding shareholder status?

A Yes.

Q Now, this is following the bid; right?

A This was following the bid submission.

Q And this is two days before your meeting in Denver with Mr. Schneider and Mr. Elsner at UIH's headquarters; right?

A This was a couple of days before that meeting, yes.

Q And Mr. Fung tells you on Page 2, "Our deal with UIH on signing shareholder's agreement is that once the license is awarded, we will provide them with a period of time, most likely 60 days, in order for them to demonstrate funding worthiness." Do you see that?

A Yes.

Q Is that an accurate reflection of what your deal was with UIH as of October 6, 1992?

A Well, deal quote, unquote. We haven't signed anything. We haven't agreed to anything. By our deal, what Mr. Fung meant was this was the position the negotiation had reached

whereby if we get a license on the 1st of June, which we did, then within 60 days from the 1st of June, UIH would come to us and prove that they had funding capability, providing they can prove to us they have funding capability to our satisfaction, then we will sign the shareholder's agreement.

Q So UIH's--well, wait a minute. It says, "Our deal with UIH on signing a shareholder's agreement is that once the license is awarded, we will provide them with a period of time, most likely 60 days, in order for them to demonstrate funding worthiness." Right?

A Yes.

Q Okay. So what you've got there is a deal with UIH where their participation is going to be subject to them getting funding within 60 days following license award?

A No, no, I just testified license award, 60 days later they come to us and prove they have funding, and if we're satisfied they have funding and if we have a shareholder's agreement and everything agreed, then we sign shareholder's agreement, 60 days after license award.

Q All right, let's put the--

A And that was only--I'm sorry--and that was a position that the negotiation had reached. This had not been submitted tot he respective boards for approval yet.

Q All right. So what you've got then is assuming a good faith negotiation of a shareholder's agreement, we'll assume that the parties in good faith can work something out, that after license award, UIH comes up with the money within 60 days, they're in?

A No, you still have to sign shareholder's agreement. You still have to get board approval. We still have to confirm NYNEX is there. All the conditions are still there. None of them has been lifted.

Q So what this means is almost nothing?

A No, I wouldn't agree with that.

Q Well, what does this give UIH at this point in time?

A What it gave UIH at this point in time?

Q Yeah.

A Well, nothing, because we had--it hasn't gone to shareholders--or directors. Not until the directors approve it, there's nothing. We had nothing, NYNEX had nothing, UIH had nothing.

Q So at this point in time, your deal with UIH was nothing?

A No approval had been given. Nothing has been recommended to the board.

Q And when Mr. Fung says our deal with UIH is such and such, it's nothing?

A Our deal--again, read it in context--was the negotiation, the stage of negotiation that by this time, October 6, 1992, the negotiators had reached, negotiators only.

Q And by this point in time, you've gotten UIH to sign a technical cooperation agreement, haven't you?

A UIH signed a technical cooperation agreement on the 25th of September, 1992.

Q And by this point in time, you have submitted your bid with reference to UIH in various places; correct?

A Yes, by this time, we had submitted that with their consent.

Q That's right. And by this point in time, you are holding UIH out as your strategic partner, your strategic cable television partner, you're holding them out that way to the world?

A We were, with their consent. They knew exactly what they were doing.

Q All right. Now, let's get back to Exhibit 486. Let me take you back to mid September.

A Did you say 486, Mr. Chase?

Q 486; right. Are you at 486?

A Not yet. Sorry.

Q This is--

A I'm sorry. Not yet.

Q Well, while you're looking for it, I'm going to tell the jury what this is.

A Okay.

Q September 17, 1992 memo from you to Mr. Woo, and it's got the document we just looked at, and it's also got then--I'll wait till you catch up to me.

A I'm there.

Q All right. It's also got contained in that exhibit a September 18, 1992 memo from you to Mr. Fung and Mr. Yu saying, "The chairman has approved an amended version of the ownership and management structure, and I attach a copy for your reference." Do you see that?

A Yes, I do.

Q All right. And over on the next page, you've got this document that we've looked at in this case saying approved, and initialled by your chairman; right?

A Yes.

Q And it's got the same management group structure, ownership structure up at the top that you talked about before. That doesn't change materially, does it?

A No, the substance is the same.

Q But then down at the bottom under internal consumption, there is a change.

A Yes.

Q The internal consumption is that you will treat UIH and NYNEX differently; correct?

A Yes.

Q NYNEX will be invited to sign a shareholder's agreement. UIH will be invited to sign a non-binding letter of intent; correct?

A Yes.

Q A non-binding letter of intent meaning that they got nothing?

A A non-binding letter of intent meaning the intents of the parties will have been agreed.

Q Well, a non-binding letter of intent means exactly what it says; right? You've got nothing as a matter of law.

A You don't have a contract, no. A non-binding letter of intent is not a contract.

Q All it is is a statement of intent, but no one can be bound to it. That's why it's called that?

A That is correct. But at least you would have reached a position where the parties have agreed on certain terms.

Q But not bound to that--

A Not bound.

Q Okay. And this is what you were going to give UIH, while you were going to give NYNEX a shareholder's agreement; right?

A The time frames are different, too. NYNEX shareholder's agreement would be signed after 15th October, 1992.

Q All right, after October 15, 1992, NYNEX becomes a shareholder and UIH becomes nothing?

A What do you mean becomes nothing?

Q Well, you're going to let them sign a non-binding letter of intent, which is the equivalent of nothing?

A It's not a contract.

Q All right.

A I don't know whether it's nothing.

Q All right. Now, did Mr. Fries tell you--look at Exhibit 493, if you will, please.

A Yes.

Q Exhibit 483 is a transmittal from your lawyers of a draft letter of intent, non-binding, September 19, 1992 is when it's transmitted, and that's a transmittal of a draft letter of intent that's among Wharf Communications, UIH and NYNEX. Do you see that?

A Yes.

Q In fact, we've got a blow-up of it here.

Now, on September 19th, or thereabouts, you present UIH with a non-binding letter of intent--now we're getting very close to bid time here--among UIH, Wharf and NYNEX, and Mr. Fries underlines, "Does not create legally binding and enforceable obligation," and he writes, "Option, would need to be if we are not on license application." Do you see that?

A I see it.

Q UIH at this time specifically rejected the idea of a non-binding letter of intent if it was to be on the license application?

MR. JENTES: Object, Your Honor. If Mr. Chase says that that's what the fact is, I don't have any objection to asking--him asking Mr. Ng if he ever saw the document or what he understands. But I don't believe the facts to be as Mr. Chase stated, and I object on that ground.

Q (by Mr. Chase) Let me withdraw the question. I'll ask you a different question, Mr. Ng.

First of all, did you ever see this document?

A No.

Q And did Mr. Ng--did Mr. Fung tell you that UIH would not agree to a non-binding letter of intent at this point in time?

A I don't remember he did.

Q Did you have any reason to believe that UIH would agree to a non-binding letter of intent if it was to be used in the license application and go forward with your project?

A Can you ask the question again?

Q Did you have any reason to believe UIH would accept a non-binding letter of intent if it was to go on your license application and go forward with you on the project?

A First of all, there was no suggestion that the non-binding letter of intent would be part of the bid.

Q I didn't say it was going to be part of the bid.

A I thought you said if it were part of the bid.

Q No, if UIH were to be part of the bid and to go forward with your project, they weren't going to sign a non-binding letter of intent, were they?

A If UIH were to be part of the bid in what capacity? You have to make it clear.

Q Just to be even in there, mentioned as your partner, mentioned as your cable partner, mentioned as anything, UIH wasn't willing to be used in any capacity in your bid on a non-binding letter of intent basis, were they?

A I have never heard that communicated to me at all.

Q Let me ask it differently, sir. In this Exhibit 486, it says, "A non-binding letter of intent will separately be signed, under which it is intended that subject to proof of financial capability," yikkity, yikkity, yik, "between Wharf and UIH." Have you ever seen such a draft non-binding letter of intent, or such a letter of intent?

A I don't remember. But then whatever Mr. Woo approved on the 18th or 19th of September was superseded. There was subsequent development.

Q Look over at Exhibit 487, please. I'll tell you what. I'll show you the whole document.

A Can I have a document?

Q Actually, I'm going to show it to you on the screen because it's in the big books, and I think we can save Mr. Gilmore a trip, unless you want to see it. We can do that, but can you see it on the screen?

A I think I would actually be a lot more comfortable--

MR. CHASE: Mr. Gilmore, 487, please.

THE WITNESS: Right; Exhibit 487.

Q (by Mr. Chase) All right. 487 tells you to--this is the day afterwards. This is September 18, 1992, one of your reports to chairman?

A Yes. The day after what?

Q Well, actually it's the day of 486, and it says on Point B, "NYNEX, UIH negotiate deal based on chairman's direction."
Right?

A right.

Q Okay. Now, you ended up doing a technical cooperation agreement instead of any of this; right? You never did carry out any of this stuff that's contained on 486, did you?

A We did. We went ahead to submit a bid, which is 100 per cent owned by Wharf Communications.

Q You never did these management groups, and you never did any of this other stuff that's contained on 486 in the approved structure, did you? You didn't have management companies and a NYNEX management company and a UIH management company. You never set those up, did you?

A No, we never formed a joint venture management company, which is why I said then the decision of September 18th or 19th, whenever that was, was subsequently superseded by another decision.

Q All right. So the point is you didn't set these up. And you also never told UIH that the most your chairman would approve at that point in time was a non-binding letter of intent for UIH, did you?

A At what time?

Q At any time.

A Well, whatever the position was, remember this kept changing on a day to day basis, as you can see this, whatever that was eventually agreed, we communicated that to UIH. We were 100 per cent open with them.

Q Is it your testimony that you told somebody at UIH that the chairman would only approve a non-binding letter of intent for UIH to become an owner in the deal?

A I did not tell anybody. That is not what I'm saying. I'm saying whatever eventually happened, we were entirely open with UIH.

Q You never told them?

A I don't remember telling them. But I was not the principal negotiator either.

Q Okay. Now, Mr. Ng, that 486 that we just looked at does anticipate a two party arrangement, does it not? What Mr. Woo approved was fully and potentially a deal where

there may be a Wharf/NYNEX partnership and not a UIH participation?

A The 486, the two parts you're referring to, the approved, so-called approved memo?

Q Well, I don't know why you call it so-called. Didn't you chairman approve that?

A He did, but then he changed his mind subsequently.

Q But at least with respect to what he approved, he approved the two party deal there, didn't he?

A As of this date, yes, he did. He changed his mind subsequently because of new information, new advice.

Q New advice or new information?

A New information to him, but new advice to him.

Q Okay. So the chairman changed his mind.

A Based on the new advice.

Q And who gave him the advice?

A It would have been me.

Q What did you tell him?

A Sometime to the effect that given the short time between the 18th or 19th of September and the 30th of September, being a very short period of less than two weeks, our advice was don't do the management joint ventures. It was simply not enough--there was simply not enough time to try to do

that without making a mistake somewhere. Time was so short, we had to close the writing of the bid and start production a few days ahead of the 30th of September.

Q So for that reason, you decided you wouldn't have this two party deal that you had in the structure approved by the chairman?

A For that reason, we recommended that we look at it again.

Q All right. And that's when you went to these technical cooperation agreements; right?

A That is correct.

Q Now--

A Well, technical cooperation agreements were envisioned even as of the date of the 18th of September.

Q By who?

A By this memo. By this note. The only thing that didn't happen in that regard were the joint venture management companies.

Q All right, let's--the note doesn't talk about technical cooperation agreements, does it?

A Yes, it does.

Q All right. Well, okay, so you guys were envisioning a technical cooperation agreement at that time?

A Two technical cooperation agreements.

Q All right. And then you took the subject up with UIH; right?

A Somebody on my team took it up, yes.

Q You didn't?

A I don't remember whether it was me.

Q Now, you testified on direct examination you understood it to be a binding agreement with UIH; right?

A Yes, I do.

Q And you testified on direct examination that you understood it to be some kind of a bridge between then and when UIH would sign a shareholder's agreement?

A Between then and when everyone will sign the shareholder's agreement.

Q All right. Now, let's look at what you said in your deposition about this subject.

THE CLERK: Which volume?

MR. CHASE: All right, I'll give you that in a second here. This is going to be--the first sound bite I'm going to play from your deposition is 157, Line 20 to 158, and it's Volume 1.

THE CLERK: Volume 1, 19 June 1995.

THE WITNESS: Thank you. Page? I'm sorry, Mr. Chase.

MR. CHASE: This first one will be 157, 20; 157, Line 20.

THE WITNESS: Okay, thank you.

(Whereupon, a portion of the deposition of Stephen Ng was played for the jury.)

MR. CHASE: Wait a minute. I'm sorry, let me give you the reference on this next one. 162, Line 25.

THE WITNESS: Okay.

MR. CHASE: Have you got it?

THE WITNESS: Yeah.

(Whereupon, a portion of the deposition of Stephen Ng was played for the jury.)

MR. CHASE: Now I'm going to go to 182, Line 3.

MR. JENTES: Before you get--I don't know whether it's in context--there's some material on Page 165 that relates to this question.

MR. CHASE: Why don't we do that.

MR. JENTES: This is on 165 at Line 6. Question--

MR. CHASE: Wait a minute. Let me get my--Go ahead.

MR. JENTES: Line 6. "Okay, let me ask the question again. In 1992, did you believe that by virtue of the TCA, Wharf and UIH were strategic partners?" Answer, "In 1992,

did I believe that by virtue of the TCA, Wharf and UIH were strategic partners?" Question, "Correct." Answer, "Yes."

MR. CHASE: And then you go on to say, "How is it that the TCA made Wharf and UIH strategic partners?" Answer, "Long-term partners." Question, "Do you believe that UIH and Wharf had any intent of ever activating the TCA?" Answer, "I don't remember." Question, "But you nevertheless believed it made them strategic partners?" Answer, "Yes."

Okay, now we're going to do the one I just referred to, and that would be Page 182, Line 3. Are you there?

THE WITNESS: Yes.

(Whereupon, a portion of the deposition of Stephen Ng was played for the jury.)

MR. CHASE: Let's go now to 244, Line 11, same volume, I think. Are you there?

THE WITNESS: Yes.

(Whereupon, a portion of the deposition of Stephen Ng was played for the jury.)

MR. CHASE: Your Honor, I think now would be a good time to take a break.

THE COURT: Okay.

(10:11 a.m.-Jury excused.)

(10:13 a.m.-Recess accordingly.)

(At 10:36 a.m. on March 27, 1997, with counsel for the parties present, the following proceedings were had:)

(Jury present.)

THE COURT: Okay, Mr. Chase, go ahead.

MR. CHASE: A moment, Your Honor, thank you. Everybody ready?

CROSS-EXAMINATION BY MR. CHASE RESUMES:

Q Mr. Ng, I'm going to change subjects on you slightly here, and I want to move it forward to--I want to talk about the October 8, 1992 meeting that you had in Denver with Mr. Elsner, Mr. Schneider and some others from UIH. Do you remember that?

A Yes.

Q All right. Now, first before we do that, I want to set the stage here a little bit. bid goes in on September 30th; right?

A Yes.

Q You're the only bidder?

A We were to find out we were the only bidder.

Q You find that out the next day that nobody else--

A The same evening.

Q Pardon me?

A The same evening.

Q Same evening. And even though you're the only bidder, there's no comfort or certainty that you're going to get the franchise awarded to you; right?

A There was no final comfort of certainty, but a lot more comfort and a lot more certainty than if there were ten other bidders.

Q Well, let me--let's talk about that for a minute. Let me ask you to look over at Exhibit 720. Well, Exhibit 20--720. All right, Exhibit 720, let me see if I can get you a copy of that.

Exhibit 720 are some meeting notes of Friday, November 6, 1992 of this three person committee that Wharf Holdings had with respect to the bids. Do you remember you had a three person committee appointed to oversee the process?

A Yes.

Q And 720 would have been some minutes of a meeting of that group, Mr. Woo, Mr. Ng and Mr. Higgonson; right?

A Yes.

Q Okay. And it's pointed out in that document on the first page of the report, franchising report, month ending October 30, 1992, bid application. "At the close of the bid submission period, it was confirmed that Wharf Cable's bid was the sole bid for the pay T.V. franchise. As a result, we can expect a more thorough and detailed examination of our proposal. The administration is committed to complete their assessment so that Exco can make a final decision in December and a license can be awarded in January." Right?

A Yes.

Q So as of the time your bid is submitted, you're concerned that there's going to be a more thorough and detailed examination, because you're the only one?

A Our concern was that--well, there was only one bid to look at. If there were ten bids, then government would need to spend time looking at ten bids. Now that they didn't have to look at nine other bids, they had a lot more time to look at ours.

Q Well, let me ask you if you agree with the way Mr. Fung

A Is it somewhere in the book?

Q No, you'll have to look up on the screen. And just tell me if you agree with the way he describes the attitude at Wharf. "We were all proceeding with the very, very, I guess, serious, how would I say, serious frame of mind--"

A I'm sorry, which line are you reading from?

Q I'm sorry, I'm at Line 13--14. "We were all proceeding with the very, very, I guess, serious, how would I say, serious frame of mind, because we didn't have a competitor to the bid. Whereas, if we had a competitor to the bid, it would have been an evaluation or a comparison of the two bids. The fact that there wasn't that basis of comparison meant that anything could be sort of become highly important to the government. For instance, I'll give you an example. If there are instances where both parties, if there were two competing bids, had neglected to mention, or whatever, it would not necessarily reflect badly on one or the other. However, in the instance where there is no such comparison, we were very cognizant that any of the answers

that we made to the government's consultants could be viewed out of context or could be judged against an absolute level--"

A Excuse me. Can you move it up?

Q Do you follow me?

A Yes.

Q --"could be judged on an absolute level and not on a relative level. That could essentially have a negative impact upon whether, one, we would win or, two, if we did win, how the outcome of the framework or the licensing framework would be determined."

Question, "Was this a concern that you were aware of within Wharf up to the time you were finally told that you were going to get the license?"

Answer, "Yes, up to and including the time that we got the license."

Question, "So there was never a feeling that, okay, we've submitted the bid, we're the only bidder, now it's a cake walk?"

Answer, "No, none at all."

Now, do you agree generally with Mr. Fung's assessment of the mood at that period of time?

A I agree and understand, because that was the mood I wanted to permeate the organization. Like a good coach, we were way ahead, but I wanted to put everybody on high alert,

don't be complacent. We've got to still do everything we need to to make sure we get this license.

Q Right. And you also could anticipate a more thorough and detailed examination from the government and its consultants?

A Well, as I said--as I testified just now, the government didn't have ten bids to look at, so the time that they could save from looking at nine other bids, they could spend on looking at our bid, and they can be critical of our bid. But at the end of the day, government had only one bid to either accept or decline.

Q That's right. And the government was relying on KPMG Pete Marwick as its consultant to help it scrutinize this bid?

A The government retained KPMG Pete Marwick to do a portion of the work that they were otherwise going to do themselves.

Q So the answer is yes?

A The answer is yes, KPMG Pete Marwick helped the government to do a portion of the work.

Q And for the jury's reference, to remind the jury, KPMG Pete Marwick was one of the big six accounting firms at the time in the world?

A One of the big, I don't know big six or big how many.

Q Well, they keep changing. But one of the biggest accounting firms in the world?

A One of the biggest accounting firms in the world, yes.

Q So at this point in time, you've got--your bid is going to be the only one scrutinized, and it's going to be led by Pete Marwick, and you've got an anticipation of a January time frame; is that right?

A It wasn't--the scrutiny wasn't going to be led by Pete Marwick.

Q They were going to participate?

A Right. Pete Marwick was only to look at the technical--not using it in an engineering term--but in the mechanical aspects of the bid. But eventually it's the government taking the advice and comments from KPMG Pete Marwick, who would be making the decision.

Q All right. And you had a very short time frame then for planning your implementation of your project?

A No, I don't understand the question. How does that follow?

Q Well, at the time, did you understand that you would have a very short time frame for ramp up and implementation of the project?

A The time frame didn't change at all, whether there were one bid or ten bids.

Q I'm not asking whether there were one bid or ten bids.

Was it your understanding at the time you submitted the bid that you would have a very short time for your implementation?

A We would have from license award, nine months to implement.

Q Why don't you look at Page 501 of your deposition.

A May I have--it's not this book.

Q You know what? Don't bother. It's not your deposition I have in my notes. I'll live with your answer until I have Mr. Fung here, and we'll deal with a different subject. Sorry. Confusion.

Let me ask you a different question. Let's talk about what you've got available to you in house at the time that you're going to be receiving this scrutiny from the government and their experts. You had Mr. Melvyn Sears; right?

A Yes.

Q Now, look at Exhibit 565, please.

A Yes, I have it.

Q Exhibit 565 is an October 2, 1992--that is your handwriting; right?

A Yes, it is.

Q And that's a handwritten memo you wrote to Mr. Sears and faxed it to him from America; right?

A No, from Canada.

Q From Canada. And this was when you were on your way, you were going to Canada, to America, and then over--I

didn't mean to be America exclusive of Denver, but after being in New York and being in Pennsylvania, you go to Denver; right?

A Yes, this was the beginning part of my trip. I was in Toronto.

Q Now, you write this memo to Mr. Sears, and could you read for me, please, the highlighted version there? The top highlighted portion; it's in your numbered Paragraph 3.

A Sure. It starts with the word, "You providing, "is that where you want me?

Q I'm actually looking at the highlighted portion. I'll read it and you tell me if I read it right.

A Okay.

Q "I have on more than one occasion asked you individually to consider staying on full-time in implementation team, but I understand when I was advised of the reasons why you cannot, or cannot make a commitment to accept my invitation." Did I read that roughly correctly?

A 100 per cent correct.

Q Great. So Mr. Sears is telling you that he's not going to be able to work your implementation for you?

A Mr. Sears had told me. I had asked him.

Q All right. And then you go on in your memo to Mr. Sears and say, "For their part, I see NYNEX and UIH

actively participating in the implementation." Do you see that?

A Yes.

Q And then you go on to talk about, "While I am in the States, I will be involved with people, meeting some people arranged by UIH," and some other things; right?

A Yes.

Q So while you're in Canada, and right after the bid goes in, you're planning your implementation and you're planning on having UIH participating in your implementation?

A Yes.

Q Now, before that, or at or about that time, you had told Mr. Schneider that you wanted from UIH, after the bid, personnel?

A Assistance with personnel.

Q You told him you wanted personnel assistance in terms of recruiting?

A Yes.

Q And actual having people secunded, sent from UIH to go be with Wharf?

A I had not told him. He volunteered. He said, "I've got people on the ground." And, in fact, I'm glad you showed me this memo because--and I remember the facts. Mr. Fung testified last week that when the UIH team was in Hong Kong in the summer of 1992, there was some acrimony

between the team that I already had in Hong Kong, and the UIH people who were visiting for a couple of weeks. And the strained relationship certainly did not go away as the summer progressed, and there came a point when simply the two teams couldn't work together. what I did was I had to design this, if you like, design this platform for the two sides to step down UIH wanted to put on the team, I put them on implementation, because they couldn't be on the same team. They had to be on different teams. Without the UIH people, I would have left my original team, Mr. Sears, Mr. Bateson, and so on and so forth, to do both.

Q Well, why didn't you have Mr. Sears and Mr. Bateson and everybody else run the implementation? You used UIH to do that, didn't you?

A I just answered that question. Without the UIH people there creating this strained relationship, I would definitely have allowed Mr. Sears and Mr. Bateson and so on to continue doing both franchising and implementation. But because UIH, the UIH people were certainly not enjoying a good relationship with my original team, I had to create this excuse. I don't often write to Mr. Sears on something like this. I had to create this excuse.

Q Well, wait a minute. Wait a minute. UIH wasn't part of your company at the time; right?

A UIH was never part of my company.

Q All right. And the bid went in as a 100 per cent Wharf bid; right?

A Yes.

Q And as far as implementation goes, Wharf could have used whoever it wanted to use for implementation. It could have used its own people, if it had the people. It could have hired somebody, if it could find somebody. It ended up using UIH, and that was Wharf's choice; right?

A Strictly speaking, I could have gone to Falcon and asked Falcon to provide me with half a dozen executives, but I don't think UIH would have been too pleased.

Q Well, you think Falcon would have just handed you over a half a dozen executives?

A Well, I don't know. I never asked.

Q Well, the point of the matter is in this handwritten note, you tell Mr. Sears that you've asked him to consider staying on full-time in implementation. He won't, and you're going to have UIH doing it; right?

A He won't what?

Q He won't stay on as you've requested.

A Oh, he won't stay on, no. But the point is, and the fact is, he continued to be full-time on the project until the spring of 1993, well past the time when the people that I was recruiting when I was in New York and Denver and subsequently started to work full-time for Wharf Cable.

Q All right. And so UIH is going to--and NYNEX, as you say in your memo, they're going to do your implementation, and you've talked to Mr. Schneider--

A No, they were not going to do our implementation. They would actively participate in the implementation.

Q All right, we'll talk about what that means as we go forward here. And let me ask you, since we can probably abbreviate this, look at your deposition, Page 307. And this is on this implementation subject.

A Page 307?

Q Right.

A Which line?

Q 307, and it's starting on Line 20.

A Okay.

Q Okay, we're going to read to you for a while here.

Question, "And did you ask them to give you assistance with respect to this implementation?

Answer, "Yes, I did."

Question, "Who did you ask?"

Answer, "I don't remember who I asked, but probably Mark Schneider."

Turn over the page, and I'm going to read for a while here to see if this is your testimony under oath almost two years ago.

MR. JENTES: Your Honor, I object to this. I don't think this is impeaching at all. It's not inconsistent at all with what he's testified to.

MR. CHASE: It's 100 per cent inconsistent, Your Honor.

THE COURT: Overruled.

Q (by Mr. Chase) "Question: And that would have been some time prior to this October 2, 1992, date, or was it afterwards?

"Answer: It would be logical to conclude that it was before October 2, 1992.

"Question: What did you ask Mr. Schneider?

"Answer: I don't remember.

"Question: Well, generally, what kind of services were you looking for from UIH in terms of implementation?

"Answer: Cable television services.

"Question: You were looking for assistance in recruiting additional manpower; right?

"Answer: I was doing that, too, I believe.

"Question: You were looking for assistance in developing a business plan; right?

"Answer: I'm not sure about that.

"Question: Well, you were also looking for assistance and somebody helping you design your network and your computer system; right?

"Answer: The computer system, maybe, I'm not sure about the network.were looking for assistance with respect to procurement of important equipment, like decoders?

"Answer: Maybe.

"Question: You were, weren't you?

"Answer: I think, yes, we were. these are the kinds of things you asked UIH to help you with; right?

"Answer: These are the kind of thing that UIH helped with.

"Question: Pursuant to your request; right?

"Answer: Presumably, but I don't remember the request.

"Question: All right. And what did you agree to do for UIH in return for that?

"Answer: I don't remember.

"Question: Did you offer anything to UIH in return for that? Answer, I don't remember."

Well, we'll get to that part of it in a minute, but those questions with respect to the implementation and with respect to your request to UIH were asked by you almost two years ago and those were your answers; correct?

A Yes.

Q All right. Now, at that point in time, October 2nd, 1992, and then we'll take it up to October 8th, so we can get to the

meeting here eventually, the only thing you had with UIH was this technical cooperation agreement; right?

A The only thing I had with UIH? The only agreement I had with UIH, the only contract, yes.

Q Well, let's look at--let's look at this for a moment. This is a thing called the TCA and it's kind of a time line. You--why don't you put a copy of the TCA in front of you for a moment.

A Which exhibit is this?

Q It's Exhibit 531. Well, no--

A If I--I'm sorry?

Q Exhibit 531.

A Right.

Q You have it?

A Yeah.

Q That's the Technical Cooperation Agreement; right?

A Yes.

Q Did you ever read it?

A Do I ever read it?

Q Have you ever read it?

A Oh, have I read it. Yes, I have.

Q All right. And you're aware, are you not, that under the terms of the Technical Cooperation Agreement if one assumes for a moment that it's to be a binding, applicable agreement, under the terms of that UIH was not committed to provide any services until license award, which was June 1, 1993; correct?

A Yes.

Q And so UIH was not committed in October, 1992, even if you assume the Technical Cooperation Agreement to be a binding agreement, UIH wasn't committed at that time to do anything, was it?

A No, there was no agreement.

Q All right. Now, you come to--you come to Denver on October 8th, 1992; right?

A I was in Denver October 7th.

Q October 7th, October 8th, we don't--we don't really need to beat that one up. Just so I understand, one of your purposes to be in Denver was you were going to be recruiting people, interviewing people at UIH's office?

A The main purpose of my going to Denver was to recruit people and UIH kindly offered the office for me to have my meetings.

Q And at that point in time you certainly anticipated that UIH would want to talk about this partnership subject?

A I had to reason to believe why they didn't want to raise the partnership subject.

Q And at this point in time, you certainly understood that UIH wanted to talk about all the things you were requesting of them for implementation?

A Well, we don't see each other all the time, so when I was in Denver, yes.

Q Well, the litany that I just read from your deposition, UIH wanted to talk to you about that, didn't they?

A At what--

Q The things that--

A --time?

Q --you were asking for. October 8th, 1992.

A I don't want to dispute that about the implementation assistance?

Q That's right.

A I don't have--I don't want to dispute that.

Q You don't want to dispute that they wanted to talk to you about it?

A Right.

Q In fact, you flew out on the airplane from New York with Mr. D'Ottavio, did you not?

A I'm not sure. I don't think so.

Q From Pennsylvania, I'm sorry, not New York. You came from the Jerrold offices.

A Yeah, we came from Jerrold offices to Denver.

Q And D'Ottavio was with you?

A Yes, he was in the same--same plane.

Q And he talked to you about the demands that you were making on UIH at this time?

A I don't remember specifically what we talked about. We had a lot of Jerrold people on board at the same flight.

Q You talked with Mr. D'Ottavio at some time in this point in time about the demands Wharf was making on UIH with respect to the kinds of things I just read to you from your deposition?

A I have general recollection, but nothing specific.

Q So if Mr. D'Ottavio testified that he talked to you about that, you'd have no basis to deny it?

A No, I wouldn't deny it.

Q And Mr. D'Ottavio pointed out to you that that's quite a stretch for UIH, to give this kind of commitment?

A I don't remember he said that.

Q If he did say it, would you have any grounds to deny it?

A I have no basis of confirming or denying.

Q Now, you come out to Denver and you go to the UIH offices and we've looked at the agenda and you pretty much don't disagree with that agenda that we looked at, you went to their offices, you met with some people on interviews, you had lunch with a group of people and you agree with all that?

A Generally. There--there were some changes, but, yes.

Q Now, you also met with Mr. Schneider and Mr. Elsner separately in Mr. Elsner's conference room; did you not?

A I thought it was in Mr. Elsner's office, but if you say it's in his conference room, I'm not sure whether we should debate that.

Q Let me ask you this. Do you have any recall of that meeting whatsoever?

A I have general recall of the meeting, yes.

Q Do you have any recall of the discussions?

A General, but very, very vague because as far as I can remember there was no information that came out of that meeting, it was so very general meeting.

Q Well, when I asked you about this two years ago you had no recollection; now you say you have some general recollection?

A Well, I--as I--what, two years ago and now, I've read a lot more documents, I've spent two and a half weeks, three weeks in this Court and I've relived the experience back in 1992.

Q Well, let's see what you said before you had your relive. Look at page 318 of your deposition, please.

A Right. Line?

Q I'm sorry. Go to 318, line--let me start you on page 10, line 10.
A Right.

Q Okay. Start you there.

A Okay.

Q "Did you have a conversation on that day or at any time while you were in Denver on this trip with Bill Elsner regarding Wharf's needs with respect to implementation? Answer, I do not remember. Question, did you make requests of Mr. Elsner? Answer, I do not remember. Question, do you have--did you have a conversation with Mr. Elsner where Mr. Elsner was present where UIH indicated its needs with respect to a right to invest in the Wharf project? Answer, can you ask the question again? Answer, I don't believe Mr. Elsner or anybody in UIH expressed a right to invest in Wharf Cable. Mister--me, I don't think that was my question but I'll ask it differently. Did you have conversations or a conversation with UIH personnel at this time regarding a UIH right to invest in the Wharf Cable project? Answer, I don't remember anyone in UIH saying to me they had a right to invest in the project. Question, did you have any conversation about the subject of a right to invest, obtaining a right to invest, having a right to invest, wishing for a right to invest, anything along those lines? Answer, I do not remember. Do you remember the subject of the UIH investment in the Wharf project even being discussed on October 8th or at any time during the Denver trip? No, I don't. Question, do you deny that you had those

discussions? Answer, I do not deny that we had discussions, but I do not remember what was discussed."

Now--

MR. JENTES: Are you going to stop there?

MR. CHASE: You want me to keep going?

MR. JENTES: Yes.

MR. CHASE: I'll keep going. You tell me when to stop.

MR. JENTES: Why don't you go down through Mary?

Q (by Mr. Chase) Okay. I'll do it all the way. now you know the complaint it's alleged that Wharf through you told UIH it would have an option to invest in the cable project; you're aware of that? You're aware that that's what the complaint says? Answer, yes. Okay." Let me line it up.

"Do you deny that? Deny what? Deny that you told UIH it would have an option to invest in the Wharf Cable project? Answer, categorically. Question, pardon me? Answer, categorically. You categorically deny it? You remember any conversation where an option was discussed? Answer, can you ask the question again? Do you remember any conversation during this time period in Denver where the subject of an option was discussed? Answer, I recall discussions, but I don't recall what was discussed. Question, do you recall whether the subject of an option was discussed? Answer, no, I do not. Question, do you recall whether the subject of a UIH right to invest in the project was discussed? Answer, no, I do not recall. Question, so you recall--so you say you recall discussions but you don't

recall what was discussed; right? Answer, that is correct. Do you recall that there were any discussions relating to the possibility of a UIH equity interest in the Wharf Cable project? Answer, can you please ask the question again?" And I ask it again.

"Answer, I do not recall any discussions. Question, now if you can't recall discussions, how can you recall that you categorically did not offer an option? Answer, if I cannot recall what discussions I had with a beautiful lady next door, I can still recall that I did not promise to marry her. Question, that's your answer? That's my answer. Question, now UIH was not asking to get married, was it? Answer, whatever it was. Question, UIH was interested in investing in the cable project; right? Right. Question, and as of October 8th, 1992, did UIH have a reasonable expectation that it would have that right? Answer, I don't know. Question, did you believe that it would be reasonable for UIH to expect that it would be able to invest in the project? Answer, I do not believe UIH had a right. Question, I didn't ask about a right. As of October 8th, 1992, do you believe it would have been reasonable for UIH to expect that it would obtain a right to invest in the cable project? Answer, I'm not sure. Question, was there ever a time where you believed it would be reasonable for UIH to expect that it would obtain a right to invest in the cable project?" Then there's some rigamole, you ask me to ask it again.

"Did you ever believe that it would be reasonable for UIH to expect it would obtain a right to invest in the cable project? Answer, I'm not sure."

Okay. That's a long series of questions and answers with respect to your meeting with UIH on October 8th, 1992; correct?

A Yes.

Q Now, let's see if we can reach some common ground about what you do recall about that particular day. First of all, we've talked to you about D'Ottavio. You did talk to Mr. Schneider and Mr. Elsner separately at some point in time; right?

A Separately meaning first to Mr. Elsner and separately to Mr. Schneider?

Q No, the two of them together.

A I remember talking to Mr. Elsner and I think Mr. Schneider, Mr. Mark Schneider, was present, too.

Q All right.

A For--for a period.

Q Now, in your deposition you testified you don't remember any discussion about an investment; is that still your testimony?

A I don't remember any specific--I have no specific recall about what was discussed.

Q On that subject?

A I'm sorry?

Q On that subject?

A On the subject of investment, yes.

Q All right. Now, you're aware that Mr. Schneider and Mr. Elsner have both testified that you talked at some length

about that subject and that UIH wanted some clarity and some certainty as to what its rights were? You're aware of that?

A Yes, I--I am generally aware, yes.

Q You were sitting--

A I don't--

Q --here during some of it, weren't you?

A Yes, I was.

Q Or all of it?

A Some of it. Mr. Elsner and Mr. Mark Schneider never finished by the time I left Denver.

Q All right. And I take it yo categorically deny what they said from the witness stand?

A What they said about their right to invest?

Q About their discussion with you about their needing clarity of a right to invest.

A I don't remember they--they put that to me. I don't remember they--they put to me that they needed some clarification about their so-called right to invest.

Q So that subject may have happened and you just don't remember it right now?

A If they did raise this subject or so-called right to invest, I would remember because they had no right to invest. In my mind it was very, very clear.

Q Well, so are you saying it's very, very clear, you couldn't even discuss the subject?

A Absolutely, if they had raised it, I would have told them that it was not a subject for discussion. They had no right to invest.

Q Well--

A We can talk about negotiating an agreement to allow them to invest, but not a right to invest.

Q Listen to my question, Mr. Ng. My question is, you don't dispute that they raised the issue of clarity with respect to what their right would be?

A If they used the term we have a right to invest, I would have objected right away and I would remember it.

Q Well, we all understand--

A If they didn't use that term--

Q We all understand that's what you're saying here today. We all understand that. What I'm trying to do is talk about did they talk to you about wanting some clarity with respect to where they stood in this project? Did they at least talk about that?

A They--we--about the potential investment, yes. I--I would not dispute that. I would not deny that we talked about a potential investment.

Q All right. And, of course, at the very time that you're there, you're aware of the fact that there are draft shareholders agreements with UIH, NYNEX and Wharf being circulated; right?

A I was generally aware, but that was something that I left to Mr. Fung to do.

Q But it's a perfectly natural thing to be discussing while you're in Denver is what's going on with respect to completing this deal; isn't it?

A As I said, I wouldn't have--I would not dispute if they said we discussed about the potential investment. I would not disagree or deny or dispute.

Q All right. And it's also a very natural thing to be discussing as to what UIH is going to be doing for you pursuant to your implementation requests; right?

A It would have been a logical thing to discuss, yes.

Q So if Mr. Elsner and Mr. Schneider and Mr. D'Ottavio have testified that you talked about that subject and what it meant to their company, you wouldn't have any basis to deny it, would you?

A If they testified that we talked about the subject of implementation I would have no basis and do not wish to dispute.

Q Not just the subject of implementation, Mr. Ng, the specific things you were asking of UIH and what it meant to their company to provide that to you.

A I do not remember the discussion going into the area of what it meant to their company.

Q You were aware, were you not, that UIH was certainly not a NYNEX?

A UIH and NYNEX were two different companies. I was aware and I am aware.

Q When you say two different companies, we all understand they're two different companies. You understand that the magnitude of wealth between the companies is light years? Sorry. Forget the metaphor. understand that NYNEX was a hugh, rich, very asset rich conglomerate and UIH was a very small company?

A I understood UIH was not a big company.

Q All right. Now, you--you talked at that meeting as well about what UIH would have to do and what UIH would require to be able to come up with the money for its investment; right?
A Can you ask the question again?

Q You talked at that meeting about what UIH would have to do and what it would require if it could come up with the money for its investment?

A I have no specific recall of that discussion.

Q You don't deny it?

A I don't know.

Q And at that point in time, you were told in no uncertain terms, were you not, that UIH would have to be able to raise

the money? It would have to have time to raise the money? You knew that?

A That information had been fed to us in the second half or middle of September, but I do not remember whether this was discussed in Denver on the 8th of October.

Q So if Mr. Elsner and Mr. Schneider took that stand under oath and they said that they told you plainly that they were interested in investing, they thought they were going to invest, but they had to have time to raise the money, you wouldn't have any ground to dispute that?

A I do not wish to dispute it.

Q Now, UIH also told you that without having some clarity with respect to where it stood in the project, that it would not be able to commit the implementation services you were requesting, didn't it?

A I don't remember that. I don't remember they said that.

Q Well, now, if Mr. Schneider and Mr. Elsner testified under oath that that's exactly what they told you, you wouldn't dispute that, would you?

A What was it that they told me exactly?

Q Told you that unless they could get some clarity with where they stood in this project they were not willing to commit to the implementation services you were requesting.

A What do you mean by clarity? Clarification or certainty?

Q Well, Mr. Ng, I'm--I wasn't there and what I'm trying to do is ask you that when you're in a conversation with Mr. Schneider and Mr. Elsner, do you recall them telling you that unless there was some clarity, clearness, certainty, as to where they stood in the project--now, I know you're not going to agree with me, excuse me. I can't see you any more. Let me finish the question.

I know you're not going to agree with me as to where they stood in the project, I'm not asking you to agree with that, I'm asking about the issue of clarity and certainty. Do you or do you not recall that being a concern expressed by the UIH representatives?

MR. JENTES: Objection.

MR. CHASE: Now, don't answer until your counsel objects.

MR. JENTES: Object to the form of the question. It's just compound beyond belief.

THE COURT: All right. Rephrase the question.

MR. CHASE: Compound beyond whose belief?

(Laughter)

MR. JENTES: You ask it and then you ask it more.

Q (by Mr. Chase) Mr. Ng, I'm going to ask it real simple. The issue of UIH's investment--the issue of where UIH stood in the project, they wanted clarity; didn't they?

A If they wanted clarification of where they stood, then I would not dispute.

Q You don't dispute, then, at least that much, that Mr. Elsner--

A I don't wish to dispute if they asked, hey, where do we stand? I--I would not dispute that at all.

Q All right. Now, by this point in time--okay. So you--then you acknowledge that there may well have been discussions on that subject?

A There may well have been. I have no specific recall and I do not wish to deny it.

Q Now, you deny categorically, I believe, because you wouldn't marry her, that an option was ever presented, discussed, proposed, whatever; right?

A Yes, I deny categorically.

Q And that's because Wharf doesn't give options; right?

A Well, it's more than that.

Q Well, that's one reason; right?

A No, in--well, that's certainly one reason, but a very important reason, too, is only about two weeks earlier I was in Hong Kong, I was with my Board, I was then subsequent--subsequently in discussion with my chairman either over the telephone, in meetings or through an exchange of memorandum, and it was very clear to me that my chairman, as of two weeks ago, did not accept a situation where there was only Wharf and UIH. And for me to come to Denver two weeks later to not only do that deal, but to do something even worse, not just signing up UIH when I was in Denver, but actually giving an option for UIH to commit--or rather

for UIH to invest in the project. To me, that would have been a great deterioration in our position in a two week time. And I had no authority, I had no reason to believe that during that two week period our company would have accepted something like that. It was worse than two weeks ago, as far as we were concerned.

Q Mr. Ng, let me--let me leave the word option out of this and ask you this question. If you were to tell UIH that if it came up with the money it could invest, its investment then would depend upon UIH coming up with the money; right?

A I--can you ask the question again? It's--

Q Yeah. If you were--leave the word option aside.

A Okay.

Q Leave the word option aside.

A Right.

Q And if you said to UIH, okay, if you got the money you can invest, then if they never came up with the money you'd never have to reach any of these other issues, would you? Shareholders agreement, third party, all the other things you've been talking about.

A Well, if the number one issue is do you have the money and the answer is no, I don't have the money, then I agree, you don't need to talk about anything else.

Q That's right. And so if UIH--if you say to UIH, if you got the money, fine; if you don't have the money, forget about it, and if you're convinced they're never going to have the money, you got nothing to worry about, do you?

A Was I convinced?

Q If you're convinced that they're not going to have the money, you can promise them the State of Montana; can't you?

A If I was. I don't--I'm not sure I agree with that.

Q Why?

A That's an assumption.

Q That's an assumption. That's an assumption. And it's October 8th, 1992, and you're in UIH's office and you want their implementation services; right?

A I want the implementation services, I wanted some assistance. I could--some assistance from UIH would have been useful to us, but not at any price.

Q And at that point in time you know UIH are not consultants?

A They said they were not consultants.

Q And you know at that point in time they have no obligation under the TCA--

A Hang on. They said they were not consultants--if I may finish my answer.

Q Sure.

A They said they were not consultants, but they signed a TCA. They signed a TCA with their eyes open. We told the Hong Kong government a long time ago we would only

accept six years of exclusivity. When eventually the offer was three exclusivity, what did we do? We accepted. So UIH said to us early on, we're not consultants, we don't do anything like this, but the proof of the pudding was when there was no investment certainty as fo the September 1992, they signed a TCA.

Q Mr. Ng, I--I suspect you don't want me to play our television pieces again about the TCA, so I'm going to let that one pass for a moment, but let's--let's start with this proposition. So what, on October 8th, 1992, if the TCA were the Magna Carte or the greatest agreement in the history of the world, UIH had no obligation to do a thing; did they?

A As of which date? Sorry.

Q October 8th, 1992.

A UIH had no obligation as of the October 8th, 1992, to d a thing apart from the several clauses which are in the TCA which came into effect immediately.

Q And none of those clauses that came into effect immediately required them to provide the implementation services you were requesting, did they?

A You're right. You're correct.

Q All right. Now, let's get back to UIH's office October 8th, 1992, you need the implementation services, the TCA wouldn't kick in, UIH doesn't have 40 to $50 million; does it?

A I don't know.

Q Well, when you were sitting there in their office did you believe they had 40 to $50 million?

A Oh, you mean did they? I don't--did they at that time; is that the question?

Q Yeah. You knew perfectly well they didn't have that kind of money.

A Oh, at that time. Well, I had no evidence they had the money.

Q You know, in fact, let's talk about what you knew about money up to that point in time because you keep talking about the fact that you didn't know anything. Let me ask you to look at Exhibit 135 and this is--this is going to have to go--Mr. Gilmore, this is in the--in the master series.

A Okay. 135, Mr. Chase?

Q Yeah, please.

A Thank you. Right.

Q Now, 135 is an October 5th, 1991, letter from Mr. D'Ottavio to you transmitting information about UIH; do you see that?

A Yes.

Q And the information that's being transmitted to you about UIH, we're not going to go into it in detail, is information about the company, the company's finances, the company's project; right? It's various projects.

A Let me read it first.

Q You know, Mr. Ng, for the sake of time since I would like to try to finish you today, I'm going to change the question.

A Okay.

Q So you don't have to verify that.

A Right.

Q Do you deny that you received this information in October 1991 from UIH?

A No.

Q All right. Now, look if you will, please, at Exhibit 13 and I'm going to have to call on your services again, Mr. Gilmore. I'm sorry, but it's--it's a large exhibit and I'm certainly not going to ask you to go through it, I'm just going to ask you a general question.

A Right. I have Exhibit 13.

Q Hold on. We could be in serious trouble here. We're okay.

You got Exhibit 13?

A Yes, I do.

Q I'm not even going to try to use the Elmo for this one. It's huge collection of financial information delivered to your company by UIH; is that right?

A Whew. I don't know how to answer--delivered to my company by UIH.

Q This is--this is a collection of financial information about UIH starting with the Arthur Andersen financials that we've talked about, information about the projects, information about the--

A Right.

Q --subsidiaries.

A So if--if the record says this came from the files of Wharf Cable, I don't wish to dispute.

Q Okay. Now, let me ask you another question here.

MR. JENTES: For the record, I think Mr. Chase, you'll agree, that the relevant document is the one on top which I don't have in front of me, but it has been testified that those documents which are the financial statement for the company as of December 31, 1990 and 1991. I think the accountant letter is dated in April of 1992. So they are not faxed to Wharf, I think there is a fax on the top of it that's either August or September of 1992.

THE WITNESS: There's a fax line on the top, but it doesn't say who it is faxed to.

Q (by Mr. Chase) Mr. Ng, I'm not--

MR. JENTES: But what is the date on it?

THE WITNESS: August 18, 1992.

Q (by Mr. Chase) All right. August 18, 1992. Close enough that I'm not going to argue with you about all the documents in this thing and as to when you received them.

What I will do, however, is ask you to look at page 900 of your deposition.

THE CLERK: That would be in volume 4.

MR. CHASE: That's right.

THE CLERK: 22nd of June 1995.

THE WITNESS: Thank you. I'm on it.

Q (by Mr. Chase) Very short section. Page 900, line 10.

A Right.

Q "Question, specifically what financial information from UIH was it you wanted that you never got? Answer, I not remember what specific financial information that we wanted that we never got." See that?

A Yes.

Q All right. Now, I'm not going to quibble with you about what's contained within 13 because we'll be here a year talking about that. I'm going to move now to another subject here.

A What was this--this reference to? What you just read me, what was the timing and--

Q Well, you want to look at it?

A Just so I understand where you're coming from.

Q Go back to page 900. I think the timing is ever, but you can satisfy yourself. You want to satisfy yourself on that? Go ahead. It doesn't limit the time frame.

A Okay.

Q Okay?

A Yeah, for time being.

Q Now, let's talk about simply the subject of options, that you say your company doesn't give; right?

A Right. In the context of this kind of options.

Q Oh, this kind of options?

A Well, as Mr. Woo testified, we have some executive share options.

Q Look at Exhibit 369, if you will, please.

A I'm on it.

Q You have Exhibit 369. Now, this is a document that we've seen a number of times in this case and this is a document entitled, "UIH Asia," it's dated August 20, 1992 and it contains a provision on Hong Kong under UIH Asia Investment Company, and it says, "UIH Asia Investment Company has the option to acquire a ten per cent interest in Wharf Cable, a consortium bidding for the cable license to serve Hong Kong." Do you see that?

A Yes.

Q And were you present when Mr. Hudon talked about the fact that he talked about this memo and presented it to you and Mr. Fung?

A What did he talk about?

Q Were you here when Mr. Hudon testified?

A No.

Q Where you here when Mr. Hudon said that he showed this memo to your people, if not you?

A I was not here.

Q Now, this document, Exhibit 369, was produced to us out of your files--

A Out of my--

Q --are you aware of that?

A --files?

Q Out of your files.

A My personal files?

Q Your personal files.

A Is that what the record--

Q Well, I say personal, I don't mean they went into your house. Your personal file that you keep at Wharf on this project or with respect to UIH. Why don't you look at Exhibit 3? I'll tell you what was produced out of--look at

Exhibit 3. that's going to be in the book, Mr. Gilmore. I'm sorry.

THE COURT: About ready for the 18th hole, aren't you, Mr. Gilmore?

MR. JENTES: Your Honor, if I may, I don't want to get into a dispute with Mr. Chase on this thing. There was in the early production of documents an exchange as to where files came from. And I don't believe that this document says what he believes it says.

THE COURT: Okay.

MR. JENTES: But in any event, my only point is I don't think it makes a lot of difference at this point. Why doesn't he just ask Mr. Ng whether or not he thinks it came out of his files or not and we can go on from there.

THE COURT: Well, I'll let him pursue it if he wants.

MR. CHASE: I want to establish that it came out of your file.

THE COURT: Yeah. Go ahead.

Q (by Mr. Chase) Okay. You got Exhibit 3 there?

A Okay. No, not yet. Yes.

Q All right. Now, Exhibit 3 is a document exchanged between lawyers indicating where documents were produced from. You see that?

A I see the letter.

Q It's a letter from Scott Bauer, to my left. It's not in evidence. It's a letter from Scott Bauer to my left to Mr. Wilson on my right and it encloses an indication that Exhibit 369, August 20, 1992, UIH Asia, discussion outline for equity came out of Stephen Ng's files on UIH. You see that?

A No, I--no, I don't see that. Where is it?

Q Look at the first page following the cover letter.

A The first page. Quite a few covering letters.

Q David, can you help?

A April 20, 1995; is that what you're referring to?

Q The cover letter on Exhibit 3 is February 16, 1995.

A Oh, okay. Sorry.

Q You there?

A Appendix B.

Q Appendix B.

A Okay. Which line?

Q And it says--well, I'm not going to read it to you. I'm going to ask you to look at that and verify for me that the August 20, 1992, document entitled, "UIH Asia, Discussion Outline for Equity," came out of Stephen Ng's files on UIH.

MR. JENTES: Again, Your Honor, I object. This isn't Mr. Ng's document. It's not his, it's a document from Mr.

Bauer and I'm not sure how he can know what Mr. Bauer said to Mr. Wilson.

THE COURT: I think we're getting caught up in a procedural cul-de-sac. It really doesn't--

MR. JENTES: I agree with you.

THE COURT: --matter a lot. Let's go on with the question.

MR. CHASE: Well, I just want him to verify that this document 4was produced out of his files.

THE COURT: You're entitled to that. You can ask him that question.

THE COURT: I cannot confirm that it came out of our files.

Q (by Mr. Chase) And do you dispute that, what's contained in Exhibit 3?

A I have no basis to dispute. I do not wish to dispute it. I have no basis.

Q All right. When you say--

A But I cannot confirm it came it came out of my file.

Q All right. Good enough.

Look at Exhibit 504, please.

A Okay.

Q Now, Exhibit 504 is another document that we're familiar with in this case. This is the document that was a draft of your bid application, Wharf Cable bid application, where it says, "Wharf is the 100 per cent owner, has offered options to NYNEX and UIH to purchase up to 30 per cent of the shares in CNCL." See that?

A Yes.

Q You ever see this document before?

A Not until I saw it in this courtroom last week.

Q Did you discuss it with Mr. Fung as to how--not last week, but did you discuss in 1992 how such a document came to be created?

A I did not know of its existence until--

Q Did you discuss--

A --the litigation started.

Q Did you discuss with Mr. Fung what he was telling Mr. Fries with respect to the Technical Cooperation Agreement?

A Sorry. Can you ask the question?

Q Did you discuss with Mr. Fung what he was telling Mr. Fries with respect to the Technical Cooperation Agreement?

A That's a very broad question. I'm sure I have discussed with Mr. Fung about the Technical Cooperation Agreement and what he was talking to Mr. Fries about, but that's a very, very broad question.

Q In those discussions he told you, did he not, that UIH would require an option to go forward?

A No, I do not remember that. I don't think he did.

Q And he told you, did he not, that that's the genesis of this document? That's where this document comes from, didn't he?

A As I said just now, I was not aware of the existence of a document like this until the litigation started.

Q And you're telling me that Fung never told you that that's how this document got created?

A Never told me when?

Q That came out of his discussions with Mike Fries at the time of the Technical Cooperation Agreement.

A No, he--no, I was not aware of its existence until after the litigation had started.

Q Look over, if you will, please--

A And, clearly, this is a draft.

Q Look over, if you will, please, at Exhibit 1213. Exhibit 1213 is also a document that we've seen some of. We'll see more. July 15, 1993--I'm sorry. I'll wait for you.

A 1-2-1-3.

Q You got it?

A Yes.

Q Now, that's a July 15, 1993, memo from Mr. Fung to you; correct?

A Yes.

Q And that's transmitting a Memorandum of Understanding draft; correct?

A Yes.

Q This is certainly a document that you've looked at within the last few days, haven't you?

A Yes.

Q And you also looked at the bottom where it talks about UIH's options; you see that?

A Bottom of which page?

Q First page of the memo, "UIH's option; Euroversion, last for 180 days following our joint approval of the business plan." Do you see that?

A Yes, I saw that.

Q And you saw it in July 1993?

A In that general time frame, yes.

Q And you--you recall when you saw it in July 1993, that that's precisely what you talked about on October 8th, 1992?

A Precisely what I talked about on October 8th, 1992?

Q With Mr. Elsner and Mr. Schneider.

A No, we never talked about an option on October 8, 1992.

Q It just--

A Never.

Q It just kind of surfaced in the middle of July 1993? Just came out of nowhere?

A I don't know where it came from, but on October 8th, 1992, nobody said to me there was an option.

Q The terms that are stated here with respect to UIH's options just kind of came out of nowhere?

A As I said, I don't--

MR. JENTES: Objection. Asked and answered.

THE COURT: Overruled.

THE WITNESS: As I said, I don't know where it came from. I have no idea.

Q (by Mr. Chase) When Mr. Fung presented this to you did you tell him, Wharf doesn't grant options? We don't do those things.

A I don't remember telling him specifically.

Q All right. Let's go to a new subject. If I can work my way through the jungle of boards here. talk about what UIH did for you. I'm sure it's one of your favorite subjects. Now, first of all, we've talked about this implementation idea. It's a fact, is it not, that UIH through Mr. Pittman, was the leader of your implementation team?

A Wrong.

Q Okay. Now, look at Exhibit 235, if you will, please. The October 20, 19--235 is a large exhibit. Oh, you've got it up there. It's the--it's the composite of--Mr. Wilson's bringing it to you.

A Thank you.

Q You got it?

A Yes.

Q All right. These are your Wharf Communication weekly coordination meeting notes?

A Yes.

Q And indicates that you're present at this meeting?

A At the June 1 meeting?

Q At the October 30, 1992--

A Oh, I'm sorry.

Q --October 20, 1992, meeting.

A You're talking about October--

Q This is in the jury book at Exhibit 628, I'm told.

A I'm sorry. October which date?

Q The page may help you. It's page 92, handwritten in the lower right corner. In the jury book it's in a--it's in a stand along version, what number did you say? 628.

Have you got there?

A Yes.

Q All right. Now, there it says in your notes in the meeting where you were present, implementation team, "Bill Pittman to lead implementation team on network, marketing and customer service. SN to issue circular." Do you see that?

A Yes.

Q And that was the fact at that time; correct?

A That was the fact, but that's why when you asked me the question just now, my answer was wrong because you have to look at the context. Just the network, marketing and customer service. The implementation team was led by me and there was a lot more in the company than just network, marketing and customer service.

Q Oh, well, he was going to at least lead that much, though; right?

A Just those three aspects. And this was--this, of course, is related to the memo that I faxed back to Mr. Melvyn Sears when I was in Canada that we saw a moment ago.

Q All right.

A It's the same continuation.

Q In fact, you were calling Mr. Pittman the chief operating officer of your company, were you not?

A I don't recall using that term to describe Mr. Pittman.

Q Now, that's what Mr. Pittman testified to from the witness stand. Do you have any reason to deny that?

A I don't think any person in the company ever had that title.

Q You referred to him as you chief operating officer without giving him the former title--formal title?
A I'm sorry. I referred to him?

Q As your chief operating officer on the cable project.

A In what context?

Q Never mind, Mr. Ng. I'm not going to play 20 questions with you.

Let me ask you about Blake Williams.

A Okay.

Q Blake Williams was your chief planner on the project, wasn't he? UIH--

A No.

Q All right. Look, please, if you will at Exhibit 832. It's a document that was produced by NYNEX.

A I'm sorry. There is no 832 here.

Q All right. It's in the--the big book. Well, maybe I've got a copy here. I might--I might be able to save Mr. Gilmore a trip. I guess he wants to go. 832.

A Thank you. Right.

Q Now, this is a document that was prepared by NYNEX and

A Whatever they knew. I--they were certainly not as close as we were or I was with the project.

Q Well, now, you've got this NYNEX memo of December 8, 1992, by a Mister--it's to Van Demark from a Mr. Walvick and he says, "We were asked to review the current plans of"--

A Sorry. Where is it?

Q I'm looking at the first page of the memo.

A Okay.

Q And he drops down and he says, "The chief planner is Blake Williams of UIH, an American cable company expected to be a third partner with Wharf and NYNEX in the franchise." Do you see that

A Yes.

Q And they characterize Mr. Williams as the chief planner of the project.

A I don't know how they got the information. Was it Mr. Williams who characterized himself as the chief planner?

Q Well, you people were providing information to NYNEX about this project, weren't you?

A We people?

Q Wharf.
A The people who were in the team.

Q Yeah. And NYNEX was in the team?

A So did NYNEX provide the information to themselves?

Q I guess so.

A I don't know. And the chief planner, again, you have to look at it in context. What is the chief planner? The chief planner is the person who is responsible for the entire plan. Mr. Blake Williams, his skills and expertise were in the area of engineering and that is cable television engineering. The planning for the project is a very, very large task. There's a lot of planning for programming, there's a lot of planning for marketing, lot of planning for operations, lot of financial planning and many, many other aspects of planning.

Q So you would limit his chiefdom (sic) to engineering?

A At most to engineering.

Q All right. And, of course, he was a UIH employee until April 1993?

A Until March/April time frame.

Q Okay.

A And--

Q And Mr. Pittman was a UIH employee?

A Sorry. Again, let's make one thing clear. There were two teams; there was a implementation team and there was a franchising team. And the franchising team was doing the planning all the way up to this fall 1992 time frame.

Q My question was, Mr. Williams was a UIH employee doing what he was doing for Wharf on UIH's payroll?

A I don't know whether he was on UIH's payroll.

Q Are we back--

A He was not on Wharf payroll.

Q --to this--are we back to this person/employee thing again?

A Well, the answer is he was not on the Wharf payroll. until March/april.

Q That's right. And then you took him as your own employee?

A We took them on in March/April 1993.

Q And Mr. Moss, who was a financial analyst, was working on UIH's payroll for you until April '93 when he went on to your payroll?

A March/April. I think it was March.

Q Okay.

A In both cases I think it was March.

Q And that time you took Mr. Moss and put him in your company and you started paying him?

A Yes, directly. We started paying directly.

Q Well, up to that time you weren't paying him directly or indirectly, were you? UIH was paying him.

A I don't know whether UIH was paying them, but we did not pay them.

Q Okay. Well, I'm not going to ask you whether he's an employee or a person.

Now, UIH also assisted you in recruiting key personnel during this period of time, did it not?

A Yes, UIH provided some assistance.

Q And it recruited for you or assisted you in recruiting Mr. Keefe, who did become your chief--your permanent chief operating officer?

A We never had a chief operating officer I testified just a moment ago.

Q All right. Your cable operations director; how's that?

A Mr. Keefe was our cable operations director for a period of about one year and eight months.

Q And he was the one who replaced Mr. Pittman; right?

A No, he did not replace Mr. Pittman. I what sense? Mr. Pittman was never on our payroll.

Q Well, no, I understand that, but once Mr. Keefe showed up and became your director, then you had no need for Mr. Pittman any longer?

A If you mean Mr. Keefe took over the things that Mr. Pittman was doing, plus other things, then, yes, the answer is.

Q And--and you also--UIH also helped you in recruiting Mr. George Taylor?

A Sorry, I haven't answered the earlier question. You asked me whether UIH helped us to recruit Mr. Keefe.

Q Yes.

A Well, Mr. Keefe was sourced by a headhunter based here in Denver, but I did ask, I believe it was Mr. D'Ottavio, to do some background checking for me.

Q Okay. So Mr. D'Ottavio did some of the background checking and--and he helped you interview Mr. Keefe; right?

A I don't remember whether he interviewed Mr. Keefe or not, but he did some background checking and if the record shows that he did interview Mr. Keefe, I would not dispute that.

Q Then he made a recommendation to you that he thought he was good?

A Well, we were interviewing other people at the same time. I don't remember what his specific recommendation was, but he did not object to my intention to offer employment to Mr. Keefe.

Q And you also ended up hiring a Mr. George Taylor and Mr.
Ernie Gregory for top management positions; right?

A Wharf Cable did and that was after Mr. Keefe started to work for us in January 1993.

Q And Mr. Taylor and Mr. Gregory were both recruited for you by UIH?

A Mr. Taylor and Mr. Gregory were people that I interviewed, arranged by Mr. D'Ottavio when I was in the U.S. in October 1992. Mr. Keefe eventually in January, February, March time frame, offered employment to Mr. Taylor and Mr. Gregory.

Q Mr. Keefe on behalf of Wharf Cable?

A Yes, Mr. Keefe was acting on behalf of Wharf Cable when he offered employment to those two gentlemen.

Q The two gentlemen identified for you by Mr. D'Ottavio?

A Yes, referred to me by Mr. D'Ottavio.

Q All right. Now, you also relied heavily on Mr. D'Ottavio in your negotiations with Jerrold over the decoder boxes; correct?

A We asked Mr. D'Ottavio for assistance, but I would not characterize it as we relied heavily.

Q All right. Why don't you look over at Exhibit 848, please.

A Right.

Q Now, Exhibit 848 is a letter from Mr. Simon Yu. He worked for you; right?

A Yes, he does.

Q To a Mr. Edward Ebenbach--Edgar Ebenbach of Jerrold?

A Yes.

Q And that's your handwritten note up in the upper right?

A Yes.

Q And this letter refers to some discussions that Mr. Yu was having with Jerrold?

A Yes.

Q And your letter is to Mr. Yu--

A Or my handwriting?
Q Yes, your handwriting, "Please plan a visit to U. K. to negotiate face-to-face. I will ask Dave D'Ottavio to join you to apply the pressure!" Right?

A Yes.

Q All right. Dave D'Ottavio of UIH to join Mr. Yu to apply the pressure on Jerrold; right?

A Well, actually Dave D'Ottavio to join Mr. Yu and myself. We all met up in London and we had Scientific Atlanta and Jerrold both in London and we conducted parallel discussions between those two competitors. Mr. D'Ottavio was present.

Q All right. And Mr. D'Ottavio then was a crucial part of your negotiations. Look over at telecom 919.

A It's a different book. I have 919.

Q All right. Now, 919 is a memo from Blake Williams and Dave D'Ottavio to you and then it--that contains some handwriting on it regarding the Jerrold negotiations; right?

A Let me see. This handwriting to me, I want to read what the letter says first.

Q Please.

A All right. It is about the negotiations with both Jerrold and Scientific Atlanta.

Q All right. And the way you've got it scoped out here is that Simon and Blake to do first round of negotiations; right?

A Yes.

Q That's Simon Yu and Blake Williams?

A Yes.

Q And then Dave D'Ottavio to do the second round of the negotiations?

A Yes.

Q And then you will be the closer; right?

A I would be the person doing the final round of negotiation.

Q All right. And so you used Mr. D'Ottavio and Mr. Williams to assist you to get to that final round; right?

A And I also used Mr. Simon Yu and Mr. Melvyn Sears and Mr. Alan Burke to help me to get to the final round.

Q I'm sorry, I don't see anything about Mr. Sears and Mr. Burke in this particular reference here.

A Not in this reference, but they were present and they were active members of that negotiating team.

Q All right. Now, certainly by this point in time you were very much aware of UIH's relationship with Jerrold; were you not?

A What relationship did they have with Jerrold?

Q Certainly you were aware of UIH's longstanding customer relationship with Jerrold; were you not?

A I was aware by this time that UIH had been buying from Jerrold and Scientific Atlanta and other people for--well, not UIH as such--excuse me. Not UIH as such, but the principals of UIH.

Q And particularly Mr. D'Ottavio; right?

A I did not have any specific information or knowledge about how long Mr. D'Ottavio's relationship, so to speak, with UIH goes back.

Q Now, if Mr. Breen, who was the president of Jerrold, testified that it was important to them that Mr. D'Ottavio be involved in these negotiations and it had an effect on the deal you were going to get, you wouldn't have any basis to deny that; would you?

A The person I negotiated with at Jerrold was Mr. Harold Krisbergh. He was at that time the president of Jerrold, not Mr. Breen.

Q So you're saying that Mr. Breen had nothing to do with any of this?

A I'm not saying that. I'm saying the person with whom we concluded the negotiations, Mr. Krisbergh, was very much on the spot when we negotiated this in England.

Q And as to who would have better information as to what motivated Jerrold as between you and Mr. Breen, I think you'd have to admit Mr. Breen would have better information on that, wouldn't he?

A Better information about what?

Q What motivated Jerrold in those negotiations.

A Mr. Breen would have better information about what was happening inside Jerrold, yes, you're right.

Q All right. Now look over, please, to Exhibit 989.

A Right.

Q January 27, 1993, from you to Mr. D'Ottavio and this relates to your dealings with Jerrold and you're asking Mr. D'Ottavio on a certain matter to hit them again real hard and keep me informed; right?

A Yes.

Q And so you're working through Mr. D'Ottavio on these various negotiation points you're having with Jerrold at this time; right?

A Yes, we asked Mr. D'Ottavio to help out on one or two outstanding points--

Q These were very--

A --at that time.

Q --important points, were they not?

A They were outstanding. I don't know what you mean by important. They were points that we had not reached agreement on by that time.

Q And you needed D'Ottavio to help you; right?

A I asked Mr. D'Ottavio to help me.

MR. CHASE: Your Honor, it's probably a good time for lunch.

THE COURT: Okay. Come back at 1:15, please.

(11:55 a.m.-Jury excused.)

(11:57 a.m.-Recess accordingly.)

AFTERNOON SESSION

(At 1:20 p.m. on March 27, 1997, with counsel for the parties present, the following proceedings were had:) p.m.- Jury present.)

THE COURT: Since we're going to stop at 4:00 today, we'll take the break at about 2:30, a convenient time around there, Mr. Chase, for 15 minutes. Okay?

MR. CHASE: Okay.

CROSS-EXAMINATION BY MR. CHASE RESUMES:

Q Good afternoon.

A Good afternoon.

Q Mr. Gilmore, would you hand the witness volume 4 of his deposition, please?

THE CLERK: Sure. Volume 4, dated 22nd June 1995.

THE WITNESS: Thank you.

Q (by Mr. Chase) Mr. Ng, do you recall on direct examination Mr. Jentes asked you whether you discussed an option with UIH in 1991 and you said you did and you rejected it?

A Yes.

Q Would you please look at page 914 of your deposition?

A I'm on 914.

Q Okay. I'm looking down at line 19.

A Right.

Q "Can you recall any discussion with any UIH representatives in the fall of 1991?

"Answer: I have no specific recollection.

"Question: Do you have any general recollection?

"Answer: I cannot remember whether within that period I had any discussion with any representative of United International Holdings, Inc.

"Question: Can you recall any discussions that you had with UIH representatives in the fall of 1991 relating to an option of UIH to invest in the Wharf Cable system?

"I do not recall any such discussions."

Now, those are your answers; right?

A Yes.

Q Now, let's get back to where we were yester--before--yesterday--before lunch when we were talking about things that UIH was doing for Wharf with respect to the implementation. And I want to ask you about your Smbs system, that's your subscriber management billing system?

A Yes.

Q And you relied on the services of Mr. Paul Case to design and negotiate that system with DEC?

A We did ask Mr. Case to join our team to evaluate the various vendors offers. The team was led by one of my--one of my staff, Mr. Norris Hickerson.

Q Now, Mister--I'm sorry. I didn't mean to interrupt.

A No, that's fine. Mr. Case joined that team somewhere in the summer or fall of 1992.

Q Now, Mr. Hickerson had never before negotiated for, acquired or designed a subscriber management billing system; had he?

A I don't know whether he had or not, but I cannot say that he did, but because he had never worked for a cable television company, although he had for a long time been a key member of this company called COL, Limited, which is one of our subsidiary companies, the equivalent of Eds in Hong Kong, dealing with very complex computer systems for corporate customers of Hong Kong, the Hong Kong government, Hong Kong bank, Hong Kong telephone, and so on. And they're evaluation of these various vendors started in probably the second half of 1991.

Q The member of your team who had experience in this area was Mr. Case; correct?

A The computer person who had experience in negotiating SMBS was Mr. Case. We had a computer person who was very experienced in negotiating computer systems and then we had users on the other hand, such as Mr. Bateson and his team.

Q So he was a user, but not somebody who had ever done what we're talking about here?

A He would work with a computer expert such as Mr. Hickerson to--

Q Why don't you--

A --negotiate.

Q --go to Exhibit 800, please.

A 800?

Q 800. It's a November 26, 1992, memo from you to Mr. D'Ottavio.

A I'm there.

Q Now, it says, "Bill, Blake and Steve have been and are active participants in Wharf Cable's planning exercises and I hope you have been kept up to date." You see that?
A Yes.

Q Now, Bill, that would be Bill Pittman--

A Yes.

Q --Blake Williams and Steve Moss?

A Yes.

Q And in the second paragraph you say, "Some of the issues you propose to discuss are not ready to be discussed next week. Others may have been completed, e. g. with help

from Paul Case and Bill Pittman, we have already selected DEC's SMS offer." You see that?

A Yes, I do.

Q Now, Paul Case had had considerable experience with DEC, meaning Digital Equipment Company; right?

A I don't know. Is that his credentials?

Q Are you--are you testifying that you didn't know at the time that he had considerable experience in dealing with DEC?

A Is the question in dealing with DEC or working for DEC? I thought your question--

Q About dealing with DEC.

A I know he was experienced in--in dealing with these so-called subscriber management systems. I don't know whether it was specifically DEC or not, but DEC was somebody that we started negotiating with from 1991.

Q Among others; right?

A Among others, yes.

Q Yes.

A We--we had four or five vendors.

Q That's right. And you finally narrowed it to DEC; right?

A We finally chose DEC, yes.

Q That's right. And Mr. Case was integral to your choice, wasn't he?

A Mr. Case was part of the team that made the recommendation to me.

Q All right. Now, let's talk about your business plan. We've talked about business plans in this--in this case. Your business plan is your--your design of how you're going to make money off of this system; right?

A Our business plan was an overview of how the business would be run. That--that's a business plan.

Q Well, it's a projection. It's a projection of how many
A Including all those, and how much money we're going to make, how much money we're going to lose.

Q That's right.

A And so on.

Q And making was--was important?

A Making money was important, yes.

Q Right. Now, let's look at Exhibit 744, please.

A 744.

Q 744. Excuse me. For some reason, we designed our witness books without witnesses in mind. Let me--let me give you a copy and your counsel. Mr. Munson was the chief planner of that.

(Laughter)

THE WITNESS: Thank you.

Q (by Mr. Chase) I'm very thankful for the work that he put in on the project.

(Laughter)

Q (by Mr. Chase) As a matter of fact, we had all these documents in the witness book and he broke in last night, and I'm not making this up.

All right. Exhibit 744, Mr. Ng. That's a memo from Mr. Fung and Mr. Leung to ou of November 12, 1993, relating to Wharf Cable financial planning and budgeting; right?

A No, 1992.

Q Did I say '4?

A You said '3. No, I just wanted to make that correction for the record.

Q Split the different. All right. 1992. All right. Shouldn't have had that diet Coke at lunch.

All right. 1992. All right. And this is relating to your financial plan and your business plan; right?

A Financial planning and budgeting, yes.

Q All right. Now, "We have undertaken a top down financial planning exercise to rationalize an investor's case for the desired financial and investment profile for Wharf Cable. Our analysis has been driven by two primary objectives," and then it lays out the two objectives there,

which I won't bother reading, but those were your objectives; right?

A Uh-huh. That--

Q Level of--

A --was--those--
Q --profitability?

A I'm sorry. Was it a question?

Q Yeah, you wanted to achieve a certain level of

A Those were the two primary objectives that the two people who put together this memo had in mind.

Q All right. And this memo reflects, if you turn over to the third page.

A Third page. Right.

Q When meeting those objectives--

A I'm sorry. Okay. Right.

Q --your people were relying on UIH, in large part. Let me read it to you. "Budgeting rationale. Attached are exhibits outlining our suggested operating budget levels for achieving the desired financial results. The levels of budget rationalization were arrived after comparisons with the previous Hkcc business plan, review of the plan by UIH, as well as our subjective opinion as to the quality of the assumptions--assumption inputs to the present business plan." 4You see that?

A Yes, I do.

Q Now, UIH had been through this a number of times before, hadn't it?

A Had been through this kind of exercise or--

Q Had been through this kind of exercise with respect to developing cable tv systems.

A I have to assume they did this in their previous investments.

Q Okay.

A But I don't know for sure. I--I don't know what they did before.

Q Well, it was important to your people, was it not, that you have somebody review this thing who had been through this and understood the operational difficulties, unexpected events and whatever that might come up in a cable system?

A This is much more than just a cable system, Mr. Chase. We're talking about the entire financial planning and budgeting for Wharf Cable. And Wharf Cable is first and foremost a programming company, programming network, marketing operations. Programming is at least 50 percent of our overall annual budget. And I don't know what experience the UIH people have in that area.

Q You were in constant communication with UIH people about programming, weren't you?

A Constant communication.

Q Well, you were--you--I don't have Ms. Spangler sitting here, but you--you were in communication with Ms. Spangler on programming, we looked at some documents yesterday?

A I think we're talking about different things. When we say programming in Hong Kong, there is a lot of local production, production particularly was a very large part of our business and is a very large part of our business. We have in our company 3,000 people and that's much, much more than a cable company of our size in the U.S. would have.

Q Well, let me stop you there, because I don't want to argue with you about locally produced programming versus regional, et cetera. At that point in time you didn't have 3,000 employees.

A We started with 1500.

Q At this point in time when UIH is doing this, UIH is the only experienced cable company to review your business plan; right?

A UIH was the--well, no. Falcon also reviewed it.

Q In November 1992?

A Oh, November 1992, no. UIH was the only company that had cable background to review it, but as I said, our plan is more than just cable.

Q And that's during this implementation phase; correct?

A I'm sorry?

Q And that's during this implementation phase?

A In that time frame.

Q Okay. Now, let me talk to you about another aspect of your relation with UIH during this period of time. Following your October 8th trip to Denver, UIH representatives came to Hong Kong in the middle of October, did they not?

A Some time in October. I can't remember exactly when.

Q That would have been Mr. Gene Schneider and Mr. Bill Elsner primarily?

A Yes.

Q Now, you heard about their planned trip to Hong Kong during the month of September. Let me ask you to look at Exhibit 544.

A I'm on it.

Q Now, Exhibit 544 is a memo from you to Sonjia Norman, September 28, 1992, and you state to Ms. Norman, "Meanwhile, it just occurred to me that if Gene Schneider and Bill Elsner are visiting Hong Kong in October, we may be able to get some franchising mileage out of the visit." You see that?

A Yes.

Q Franchising mileage would mean public relations support for your bid application; right?

A Not public relations in a sense that press relations. To-- to get some benefit out of it for the purpose of winning the bid, yes, but not press necessarily.

Q All right. Forget about the press. Let's talk about who's going to decide this bid; that's the government; right?

A The government would decide the bid.

Q All right. Now, look over at Exhibit 546, please.

A 546? I don't have it.

Q It's that Munson again. This is a September 29, 1992, letter from you to Mr. Elsner.

A Thank you.

Q Relating to the Hong Kong trip--

A Right.

Q --and it's your thoughts on what Mr. Elsner and Mr. Schneider might be interested in doing while in Hong Kong.

A Yes.

Q And on the second page it contains a more detailed suggestion.

A Yes.

Q And number three was, "Suggest Stephen Ng to host lunch on October 22 for a table of eight to ten to introduce UIH as a strategic partner;" right?

A Yes.

Q And, in fact, you did that, didn't you?

A Yes.

Q And the people at that lunch included Mr. Roger Lobo, head of the broadcasting authority?

A He was on the invitation list. I don't remember exactly whether he was eventually there.

Q As was Rachel Cortland, the acting secretary for recreation and culture?

A Again, on the invitation list.

Q All right. And the other people, Mr. Selway-Swift from the Hong Kong Bank.

A He was probably on the invitation list, but he's got

Q No, but he has a lot to do with finance, doesn't he?

A Well, as a bank he could have a lot to do with finance.

Q All right. And down towards the bottom you talk about arranging a private, in-depth interview with the Sunday Morning Post to talk about UIH's vision for Asia and Hong Kong; right?

A That was the suggestion at the time.

Q That's part of your franchising mileage; right?

A Yeah, generally.

Q Now, look over, please, if you will, at Exhibit 609. I think we've got in the witness book every exhibit we don't intend to show you. right, Mr. Ng. I'm going to de-Munsonize (sic) you.

A What does that mean? Thank you.

Q Exhibit 609.

A Thank you.

Q You got it?

A Yes.

Q All right. Now, this is a letter from you to Mr. Elsner relating to that same trip and I just wanted to talk to you about the--the lunch at Wardley's that you were arranging. What is Wardley's?

A Hang on. This is third paragraph; right?

Q Right.

A Wardley is the investment banking--in Hong Kong we call them merchants bank, but those terms are often interchangeable. The investment banking arm of Hong Kong Bank, it's a company called Wardley something, something.

Q And the purpose of arranging that visit with UIH was to help them get their equity so they could invest in your project; right?

A I don't remember whether that was a specific purpose, but the general purpose of these meetings in Hong Kong that we arranged for Mr. Gene Schneider and Mr. Bill Elsner was

to introduce them to people in Hong Kong. People in Hong Kong had no idea who UIH was and if we are going to tell people that UIH is our strategic partner, then we needed to explain to them who UIH was, otherwise it would be meaningless to them. So we were doing the introduction of Mr. Elsner and Mr. Schneider to the people of Hong Kong.

Q That's right. And if they--if they understand and appreciate who UIH is and they understand UIH is going to be your partner, that helps your franchising; right?

A Well, certainly not when it comes to the bank. The bank has nothing to do with our franchising.

Q Understood. When you do that with the government.

A When we did that with the government. Well, we need to explain who UIH is, who's name is included in our bid.

Q Okay.

A NYNEX, a lot of people in Hong Kong--not a lot, I shouldn't say. Let me withdraw that. More people in Hong Kong knew about NYNEX than they knew about UIH. So our job was to explain to the people in Hong Kong concerned who UIH was, who is this company which we included in our bid.

Q Look at Exhibit 621, please. And that one will be in the book. I think it's also in the jury book.

A Yes, it is in the book and it's in front of me.

Q Okay, good. That's an October 14--October 16, 1992, letter from you to Mr. Roger Lobo, chairman of the broadcasting authority?

A Yes.

Q And he would have been a recipient of your bid; would he not?

A A recipient of our bid?

Q He would have received your bid?

A I'm hesitating because officially the bid is not submitted to him. I--we--I don't know whether he would have gotten the bid from another government department, but--

Q I'm sorry.

A --let's assume he did.

Q The broadcasting authority would certainly have access to your bid; right?

A Oh, the broadcasting authority would have access to our

Q And he's the chairman, right?

A He was and is the chairman.

Q All right. And you're writing to Mr. Lobo on October 15, 1992, inviting him to the luncheon to introduce him to Gene Schneider and Bill Elsner, Chairman and Chief Executive Officer of UIH. UIH is Wharf Cable's strategic partner for the cable television project we propose to undertake in Hong Kong; right?

A Yes.

Q And you attached to that a document called, "United International Holdings, Inc." where you set forth for Mr. Lobo a description of United International Holdings, Inc.; right?

A Well, I forwarded to Mr. Lobo some information on United International Holdings, Inc., yes.

Q Information that you believed to be correct, otherwise you wouldn't have sent it to Mr. Lobo?
A Information that I was led to be correct because this was supplied by UIH.

Q Well, you say you were led to believe it was correct. When you sent this to Mr. Lobo did you have any doubt of the accuracy of this?

A I relied on UIH who supplied the information to me.

Q Is there anything inaccurate in any of this?

A I will need to read it before I can say anything.

Q Well, right now you probably wouldn't say anything nice about Mister--about UIH but at the time you intended to supply him information about UIH; right?

A And I did supply him with information about UIH.

Q And it was important to your bid opportunity that he know more about UIH and appreciate UIH?

A It was important because UIH was included in the bid and we needed to let people know who UIH was. Without that, people wouldn't know why UIH was there at all.

Q And you say this is substantially the same information that you put in your bid; right?

A I have not reviewed this, so I cannot say that.

Q Okay. But the information that you would have put in your bid and your application to the government, you would have fully believed was true and accurate; correct?

A Again, what we supplied to the government in our bid was based on the information supplied to us by UIH.

Q Well, let me just ask you about that, Mr. Ng. Somebody supplies you information and you just slap it onto something and send it along or do you have somebody make a judgment as to whether it's accurate?

A It depends on the--what the information is. If we had independent means of checking it, we would certainly do so. If we did not, then we would rely on our good faith and take the information from the party which supplies the information to us provided that we feel the party is supplying it to us in good faith.

Q Well, did you ever find anything that was part of your bid that was false?

A I have not reviewed that. I--I cannot answer that question.

Q Did you ever go to the government and say, hey, we learned something about UIH that's inconsistent with what we said in our bid?

A I have not reviewed the bid since submission, so I cannot say that.

Q So I guess the answer is you never did?

A That's because I have not reviewed the bid.

Q Well, okay. Look at Exhibit 627. Exhibit 627 is a letter from you to Selway-Swift with the Hong Kong and Shanghai Banking Corporation?

A Yes, October 17, 1992.

Q Again introducing him to UIH, Wharf Cable's strategic partner for the cable television project?

A Yes.

Q And, in fact, you arranged a meeting with UIH and Selway-Swift?

A Is that a question?

Q Yes.

A Oh, yes.

Q And you attend that meeting?

A I think I did, yes.

Q And Mr. Hudon was at that meeting?

A I cannot remember whether Mr. Hudon was there.

Q Mr. Elsner was there?

A I cannot remember precisely.

Q And at the meeting you were talking to Selway-Swift about UIH obtaining finances to invest as your partner in the cable venture?

A What was I talking about UIH?

Q At the time you were meeting with Selway-Swift and UIH--

A Right.

Q --the discussion was about UIH obtaining money to invest in the Wharf Cable venture?

A I don't believe so. This was the first meeting ever, to my knowledge, between the UIH chairman and it's chief executive officer with a high ranking officer at the Hong Kong Bank. It is not my usual style to go in on day one without even knowing the company's--the two parties knowing each other and say, I want to borrow money. That is not my usual style.

Q So you say they didn't talk about anything about relating to UIH obtaining money to invest in the project?

A I have no specific recollection, but as I testified, Hong Kong Bank some--whatever information that UIH wanted to give to Hong Kong Bank. That was the principal purpose. I don't know we got into a lot of details about financing.

Q Well, you called them your partner, didn't you?

A We called them our strategic partner, I believe.

Q And they called you their partner, didn't they?

A I have to assume they did call us their strategic partner, too.

Q And you're in a bank?

A Yes.

Q Banks deal with money?

A Yes.

Q We're talking about the cable tv venture?

A Not necessarily. Again, Hong Kong Bank is a--again, you need to understand the context. Hong Kong Bank is a very large bank and very influential bank in Hong Kong. In fact, the Hong Kong dollar, bank notes that I carry in my wallet they are one of three banks who issue those bank notes. They are very influential on the one hand, but on the other hand they are very knowledgeable about the economy in Hong Kong. When we get visitors from overseas who come into Hong Kong from time to time, we do regularly introduce them to the Hong Kong Bank so that they can hear what Hong Kong Bank's senior officers have to say about how they see Hong Kong, how they see Hong Kong's economy, how they see Hong Kong's role in the world economy.

So this does not necessarily have anything to do whatsoever with a specific loan or a specific transaction. This can--we often do this. It's a very high level exchange of views about Hong Kong. And, in fact, beyond that, about interest rate movements, about world economy. Anything.

Q Now, Mr. Ng, Mr. Elsner sat in that seat where you're sitting, took the same oath and he testified that he sat there

with Mr. Selway-Swift with you in the room, talked about you were going to be partners in the cable venture and talked about raising money to finance the cable venture. Were you here when Elsner said that?

A I don't believe I was.

Q What--

A What did he say--what do you mean by you--talked about?

Q They talked to Mr. Selway-Swift with you present about the fact that they were going to be your partners in the cable venture and they were there to raise money for the cable venture.

Q If he mentioned that in passing to Mr. Selway-Swift, I would not dispute that because I have no basis for disputing, but to go back to the main purpose of the meeting, it was to allow the visitors from Denver to gain a better understanding of Hong Kong.

Q Now, the information that you passed on to Mr. Selway-Swift, where it says, "I am happy to enclose some background information," would like be the same information that you--you sent to Mr. Roger Lobo?

A No, it's not--

Q About UIH.

A It's not included in my exhibit.

Q It's not included in the exhibit, but can you think of any other information that you would have had at that time?

A I don't remember whether UIH provided me with any other information.

Q All right. And so whatever--whatever information you provided to Roger Lobo is probably the same information that you provided to Selway-Swift about UIH?

A Possibly, but again, I have no basis of confirming or denying.

Q Just to make sure we're talking about the same information, this is this page that I--that I had attached or that you had attached to your transmission to Roger Lobo of the broadcast authority.

A Which exhibit was this so I can go back to it?

Q This is Exhibit 621.

A Right. I have it.

Q So this is the exhibit, for example, that says, "UIH through its background and diverse international operations is able to bring a variety of experiences to Wharf Cable that will benefit the company, both in its build program and its launch and operations." That would have ben the information that you transmitted?

A To Sir Roger Lobo?

Q Yes.

A If this is indeed what was attached to the letter, yes.

Q And the same thing that says, "Quite simply, UIH is one of the largest multi-country owners and operators of cable

television systems worldwide. UIH's strategic focus is worldwide and it has a successful track record of adjusting to different market environments in different countries. Hong Kong needs the best experience and knowledge from as many different situations as possible because Hong Kong is unique." That would have been the information transmitted to these two people?

A To Sir Roger Lobo. I don't know about Mr. Selway-Swift. Again, the exhibit does not include anything.

Q And at the bottom where it says, "Further, UIH has demonstrated a remarkable ability to succeed in the international marketplace, which is virtually unique among U.S. companies. The success is founded on two principals: A, UIH is dedicated exclusively to developing international multi-channel television systems and relayed communications opportunities so that it comes to a project knowing it will be different and not simply a clone--not simply cloned a U.S. approach; and, B, UIH chooses the local partners who are most knowledgeable about the market, government preferences, business requirements, et cetera." This was the information you gave to Sir Roger; right?

A Yes, and this looks--

Q And then you go on, "Finally, because UIH is internationally focused in a business that is notorious for fits and starts, it has clearly demonstrated that it is a long term player." Right?

A Yes.

Q "The long term view is fostered and supported by the ability to transfer knowledge and technology from one market to another. Companies with only or predominantly U.S. or U.K. experience simply do not have this strength of

international experience to bring to this project. In all of it's investments, UIH has carefully identified strong local partners and key strategic partners from the United States such as U.S. West, TCI and Time Warner. In all cases, UIH has identified or developed a project and in conjunction with its local partners holds or shares primary responsibility for operating and managing the system through management agreements." Do you see that?

A Yes, I do.

Q And this is the information you wanted to make sure Roger Lobo had; right?

A Yes, very well written by UIH.

Q And it's the information you chose to deliver to Roger Lobo, head of the broadcast authority; right?

A This is the information we delivered to the head of the broadcasting authority, information supplied by UIH.

Q Why don't you look over Exhibit 626, please?

A Right.

Q 626 is an October 17, 1992, memo from Mr. Fung to you and Mr. Hung regarding investor presentation on Wharf Cable; do you see that?

A Yes.

Q And at the bottom there's some handwritten notations, Mr. Woo's on the left; your's on the right; correct?

A Yes.

Q And this document in its entirety was written by your company; correct?

A I don't know.

Q Why don't you take a look at it. I mean, UIH didn't write this document, did it?

A I would say this is something that we wrote. The source of the information I could not--

Q This is--this is Mr. Fung's speech to your investors called, "Wharf Cable, Our Investment Vision" by Emil B. Y. Fung--

A Where is it?

Q --Vice President, Commercial Wharf Communications Investment Limited; right?

A This is a draft speech.

Q and the speech that he gave would have been approved by you; correct?

A We don't have a habit of approving speeches all the time, so--

Q Let me change that question. Look over on the cover page.

A Cover page.

Q Forget about the speech, look at your handwritten note.

A Yes.

Q To Mr. Woo, "I am incorporating this"--what is that word?

A Story.

Q --"story in the next Wharf Cable newsletter." See that?

A Yes.

Q This story. All right. And you're going to incorporate it in the Wharf Cable newsletter.

A Yes.

Q Turn over to the second to the last page, please.

A Second from the last page?

Q Yeah.

A 025773?

Q Right.

A Okay

Q Now, it talked above that about the factors that are going to make Wharf a winning cable tv system. You can verify that if you like, but that's what--that's what you've got bulleted above that, why Wharf's going to be the greatest tv system in the world; latent demand for television, rapid achievement of subscriber penetration, ability to implement next generation technology, a favorable de-regulatory climate, protection from premature competition. All that is to tell your investors that you're going to have a very successful cable television system; right?

A All that was to explain to our investors how prepared we were to implement the cable system.

Q All right. Now, look at the page that I called your attention to where you finish talking about those factors and then you go on to say, "The factors outlined above combine to form an investment vision that enables the achievement of sustained, long term profitability and attractive financial returns. This view is shared by Wharf Cable's technical partners, NYNEX Network System Company and United International Holdings, Inc. As telecommunications companies with substantial experience in developing and operating cable and telephony systems around the world, both NYNEX and UIH have been integral to the development and verification of Wharf Cable's business plan. As Wharf Cable proceeds toward implementation, it's technical partners will continue to provide critical managerial expertise to insure the achievement of the plan's operational and financial objectives." Did I read that correctly?

A No, not--I'm sorry.

Q What'd I miss?

A I'm sorry. No mistake. My mind is--I beg your pardon.

Q All right. We established I can read.

A I'm sorry?

Q And that's the statement that you're making to your investors; right?

A That was the statement we were making to our investors and we did not tell them that UIH had $1 million in the bank and that kind of stuff, no.

Q I didn't ask you about $1 million dollar in the bank, I didn't--

A No, we didn't tell them.

Q --ask you whether the deal was dependent on NYNEX, I didn't ask you everything else you rehearsed. I asked you about this particular paragraph. And this particular paragraph that you're telling your investors this, that UIH has been integral. Let me use your word. Integral to the development and verification of Wharf's business plan. Yes or no?

A The word integral--yes. The word integral means a part of.

Q That's how you're reading it now?

A Oh, integral is a part of, an integra, integral An integra is a whole.

Q Mr. Munson, do you have your dictionary in attendance?

MR. MUNSON: No, but I can get it.

Q (by Mr. Chase) All right. We'll talk about it later as to what--when somebody says you're integral to this, we'll talk about what that means. But let's go on to the next one.

"As Wharf Cable proceeds toward implementation"--

A I'm sorry. Where is it?

Q Last sentence. "As Wharf Cable proceeds toward implementation, it's technical partners will continue to provide critical managerial expertise to insure the

achievement of the plan's operational and financial objectives." See that?

A Yes.

Q And the you go on to say, "Complementing Wharf Cable's technical and managerial rescues will be the financial strength and commitment of the project sponsors. In this regard, Wharf and its partners have taken a comprehensive review of all strategic and operational aspects of the cable project to assure ourselves of the project's financial viability under a multitude of adverse scenarios." You see that?

A Yes.

Q Okay. And, that's the statement that you're making to your investors, right?

A Yes, based on our view of the business to that time.

Q Okay. Now, let's look over at Exhibit 677, please. Exhibit 677 is a document that we have already looked at and so I'll try to be brief with it.

A May I have a copy?

Q No.

A Oh.

Q The record should reflect that I'm changing my answer to yes. 677, okay. This is a document that I showed you yesterday. 677 is the October 29, 1992--and I'll get the exact reference line for you. It's from Mr. Fung to you regarding responses to questions from Broadcast Authority, right?

A Yes.

Q Regarding NYNEX and UIH?

A Yes.

Q Now, yesterday, I brought this up in the context of the pre-bid services being supplied by UIH because this does refer to the period over the six months preceding this time; right?

A Excuse me, the memo refers to six months.

Q All right. And, this document goes on to talk about the fact that NYNEX and UIH have been active participants in all aspects of business planning, especially in the development and verification of our business plan assumptions. Right?

A Right.

Q And, this is what you're going to present to the Broadcast Authority?

A Not to present; in case we're asked, this was a response we had prepared.

Q This was your line to take with the Broadcast Authority, right?

A In relation to this issue, yes.

Q All right. And then, you go on to say, "Technical Cooperation Agreements have been signed and insure the transfer of proprietary technology and expertise to Wharf

Cable. Such transfers will include the actual secundment of personnel to the Wharf Cable team."

Do you see that?

A Yes.

Q Now, did you at any time tell the Broadcast Authority that those Technical Cooperation Agreements were not intended to be activated at any time?

A You're assuming that the Technical Cooperation Agreements would not be activated at any time and I don't think that assumption is correct.

Q Did you tell the Broadcast Authority anything about these Technical Cooperation Agreements?

A I don't remember whether we did or not. If it's in the presentation, it is.

Q Did you disclose to the Broadcast Authority or did you have Mr. Fung or anyone else disclose to the Broadcast Authority what the intent was of these Technical Cooperation Agreements?

A What the intent was? We have provided in our bid reasonable information about the Technical Cooperation Agreements. That's where the information is.

Q You gave them no additional information?

A I don't remember. I don't remember whether we gave them more information orally.

Q Now, it goes on to say in there, "Wharf intends to offer up to 40 per cent of the equity in the holding company of Wharf Cable to strategic partners upon license award." Right?

A Yes.

Q And, I think we might have gone around on this yesterday. You never did disclose to the Broadcast Authority that in Wharf's mind that meant there had to be at least two partners, right, two in addition to Wharf?

A I don't remember we did that because that intent--the conditions of the intent is a level of detail that we did not expect the Broadcasting Authority to be interested in at that stage.

Q By the way, you never did notify the Broadcasting Authority that the TCAs were never activated, did you; the Technical Cooperation Agreements were never activated?

A I don't believe we did, but on the other hand, I don't see any reason why we had to.

Q You told them you had Technical Cooperation Agreements, you gave them copies of the Technical Cooperation Agreements, and you never told them that these were never activated?

A I don't remember whether we did tell them or not, but the point is I don't think it was necessary to tell them. We have a lot of information in our bid document which is a very, very large document, about 3,000 or 4,000 pages of information. And, we don't, as a matter of rule, update them on every single piece of information over the time.

Q Look, if you will, please, at Exhibit 668. This is a speech to the Broadcasting Authority by Mr. Emil D Y Fung.

A Yes.

Q You saw this speech before he gave it?

A I probably did. I don't remember exactly.

Q All right. "Complimenting Wharf's contribution will be the assistance provided by our two strategic technical partners, NYNEX Network Systems and United International Holdings. Both partners possess many years of international development and operations expertise in cable tv and are ideally suited to assist Wharf Cable in realizing its financial and operative objectives." True statements to the Broadcasting Authority?

A I'm sorry?

Q True statements to the Broadcasting Authority?

A I have no reason to believe that was not delivered to the Broadcasting Authority.

Q Are those statements true?

A Are those statements true? It's an interpretation.

Q Then, it goes on to say, "It is Wharf's intent to invite our strategic partners to join in the ownership of the project upon license award. We believe that such a union will better position Wharf Cable to bring Hong Kong the latest in technology and international communication services. In order to maintain a continuation of vision and stability,

Wharf will remain as the controlling, deciding shareholder of the project."

You were aware that Mr. Fung was making those statements to the Broadcasting Authority?

A I'm aware of that kind of statements being made to the Broadcasting Authority by Mr. Fung.

Q And, you're also aware that when he was making those statements, Mr. Pittman was in attendance on behalf of UIH, correct?

A I know somebody from UIH was present. Whether it was Mr. Pittman or not, I don't want to dispute.

Q Okay. Let's look over at Exhibit 669 and I don't think this one is in the book. So, I'll give it to you. This is a copy of a speech that was given by Ms. Siu. You've talked about Ms. Siu, the head of your programming?

A Yes.

Q Now, you saw this speech before Ms. Siu gave it correct?

A I, most likely, did; yes.

Q All right. And, you'll notice on Page 5 of the speech--

A Yes.

Q --Ms. Siu represents to the Broadcast Authority, "In the area of program acquisitions not only have we received letters of support from over 130 distributors, but heads of agreements have been signed with the major suppliers

including Cnn, Espn, Fox, HBO, UIH. Upon license award, we are ready to commit purchasing contracts."

Do you see that?

A Yes, I do.

Q True statements?

A It was certainly--unless she didn't read it from the draft, it was certainly a statement that we made to the Broadcasting Authority. It is also true that, as far as I can recollect, a letter of intent had been signed with UIH and that's true. And, we--at that time in any case, we put them in the same leaque as CNN, ESPN, Fox, and HBO whether that's true or not. I don't think I need to be the judge. And, we were ready to commit purchasing contracts subject to terms and conditions being negotiated.

Q Oh, terms and conditions being negotiated, right?

A Well, the letter of intents were very, very general and there were no terms.

Q Okay. Why don't you look over at Exhibit 681?

A I don't have a copy.

Q Well, that's not unusual. Well, I don't either. Mr. Gilmore, could you help us out here? Oh, Mr. Gilmore, I have extras. I have one extra. Whatever system we've devised here, Your Honor, you can tell it's ingenious.

THE COURT: The jury is still out on that.

THE WITNESS: Which number, Mr. Chase?

Q (by Mr. Chase) I'm looking at 681, "Questions from Broadcast Authority presentation, October 29, 1992."

A Yes.

Q Okay. Were you there during this presentation?

A Yes.

Q All right. And, were these answers your answers?

A These are answers from various people; some of them were mine.

Q All right. Let's look at #6.

A #6 under A?

Q Under A, we're at corporate and finance.

A Right.

Q Where it says, "How would Wharf, NYNEX, and UIH regard an investment of this nature?" And, I guess, that question was by a Mr. Simon Bazelget?

A Yes.

Q And then, at the bottom of your answer there, you say, "In the case of UIH, who is perhaps the largest investor in international cable television systems, they have as entrepreneurs scrutinized Wharf Cable's plan and have found it entirely viable." Do you see that?

A Yes.

Q Okay. And, that's the answer that you gave to the Broadcast Authority regarding UIH; right?

A That's the answer Wharf Cable gave. I don't remember whether I gave it.

Q Well, you stand behind it, don't you?

A Oh, I do. I just needed to clarify whether it was me or not.

Q Well, who was there? You were there?

A A whole bunch of people was there.

Q Okay.

A Including Ms. Siu, Mr. Fung, and so on.

Q Look, if you will, at Exhibit 645. It's probably not in the book.

A 645?

Q It's not in the book. I've got two extra copies.

A Thank you.

Q Exhibit 645 is an October 22, 1992 memo from Mr. Fung to the cable team. And, this relates to issues raised from meeting with KPMG Consultants; do you see that?

A Yes.

Q And, those would be the people who were consulting on behalf of the government, right?

A Yes.

Q And, if you look over at the second page--

A Right.

Q It says, "KPMG had no problems with our financing strategy. Would have questioned us if we had projected 50 per cent leverage. Further, was comfortable with financial capability of Wharf to underwrite the project. They were impressed by the experience of our technical partners and found UIH's experience in MMDS-Ireland reassuring. Surprisingly, it did not press on with financial implications to the project of the intended sale of equity interests post-license award."

Do you see that?

A Yes.

Q All right. Now, were you one of the people who supplied the information to KPMG that this relates to?

A No.

Q Who would that have been, Mr. Fung?

A Mr. Fung and other members of the team.

Q And, did they report to you that KPMG was impressed with UIH's MMDS experience?

A In the context of this note, they did.

Q Now, I recall your testimony being that it was a vision of Mr. Sears that you do MMDS because that will help you

short circuit the project rather than going straight to fiber optics.

A It was a vision of Mr. Sears to use that range of MMDS. MMDS itself is not new, but the technology at that range of the frequency spectrum, it was almost unique. Nobody else had used it. And, the normal frequency range--and I don't know exactly what range UIH uses--but a normal MMDS frequency range is in the so-called 2GHz range which is a very, very congested area. In Hong Kong, in any case, we would not be able to use that range. That technology would not be applicable to Hong Kong.

Q Well, I'm sure that's something we all knew anyway. I'm being facetious, Mr. Ng, about the 2GHz and I'm not going to drag you into a discussion of the 2GHz. What I'm going to do is ask you about the last sentence of this memo here where it says, "Surprisingly, did not press on with financial implications to the project of the intended sale of equity interest post-license award." Do you see that?

A Yes.

Q Mr. Fung discussed that with you?

A No.

Q Did you take note of the fact that KPMG did not press on with the financial implications regarding equity after the license award?

A I did not take any particular note.

Q Did anybody talk to KPMG about what you considered to be the inadequate financial resources of UIH?

A I don't know.

Q You didn't offer any such information to KPMG, did you?

A I did not meet with KPMG.

Q And, you didn't have Mr. Fung offer any such information to KPMG, did you?

A I don't--I didn't ask him. I don't remember asking him, but on the other hand, it was very clear in our minds that if we ourselves were not satisfied with the financial capability of UIH, we would not sign a shareholder's agreement with them in any case. So, to me, that was not exactly relevant.

Q The point, Mr. Ng, is that in Mr. Fung's speech and throughout other of these documents, you're talking about an intended sale of equity to your partners; right?

A An intended sale subject to a number of conditions.

Q Well, I'm not going to argue with you about that because

A Yes.

Q All right. And, at no time did you offer any information or have any discussion or review with the Broadcast Authority or anybody else what you deemed to be UIH's inadequate financial situation?

A But, I just testified we intended to sell stock to UIH and NYNEX subject to a number of conditions. One of those conditions was that we needed to, first of all, be satisfied that UIH had the financial capability to invest in us--

Q Let me stop you there, Mr. Ng, because I don't have time for a speech. I want to get answers to my questions. Now, listen to me carefully. The government doesn't know a thing about your conditions, do they? All you're telling the government is that we may have these investors and what--in fact, Mr. Fung says we intend to have these investors. And, in no way, shape, or form do you tell the government about any of these conditions you keep telling the jury about?

A I have answered that question. At that point in time, in any case, it was not relevant to tell the government about the terms and conditions under which we would offer stock to UIH and NYNEX. Now, if these conditions had been met by the time we offer stock to UIH, then we would, of course, notify government.

Q Mr. Ng, let me stop you for a second. I'm afraid I have to argue with you. Take out Exhibit 668.

A 668?

Q Right. That's Mr. Fung's speech to the Broadcast Authority.

A Hold on one second. Right.

Q Now, Mr. Fung states--

A On which page?

Q Page 2.

A Page 2.

Q "It is Wharf's intent to invite out strategic partners to join in the ownership of the project upon license award. We

believe that such a union will better position Wharf Cable to bring to Hong Kong the latest in technology and international communication services." Do you see that?

A Yes.

Q Now, those statements are made to the Broadcast Authority, right?

A Yes.

Q And, they're made to the Broadcast Authority with the intent that the Broadcast Authority rely on those statements; right?

A Rely on those statements?

Q That's correct. Rely on those statements by considering them in reviewing your bid application?

A There was additional information, but that information is already in the bid.

Q Mr. Ng, Mr. Fung is telling the Broadcast Authority we believe that such a union will better position Wharf Cable to bring to Hong Kong the latest in technology and international communication services. That's what he said with your clearance; correct?

A Correct. And, we did believe in that; otherwise, we would not have been negotiating with UIH and NYNEX about inviting them to invest in Wharf Cable.

Q And, when you told the Broadcast Authority about this union, you didn't tell the Broadcast Authority about any of these conditions that you're talking about here, did you?

A No. But, there were also many other conditions that--we did not tell them about any of the terms and conditions.

Q You didn't--

A The shareholder's agreement is a big document.

Q I understand that, Mr.--

A And, we can't tell the Broadcasting Authority--

Q Well, Mr. Ng, you want the Broadcast Authority to grant your license, right?

A We wanted the license, yes, and the Broadcasting Authority was a key--one of several key bodies, government agencies, that had to endorse the license application.

Q And, if they didn't endorse it, it was dead; right?

A Strictly speaking, no, but let me grant you that.

Q All right. And, to convince the Broadcast Authority, you did a lot of things including have Mr. Fung give this speech, right?

A We were invited by the Broadcasting Authority to give a presentation. Mr. Fung gave the speech. And, he said what he did with my approval.

Q Okay. He said what he did.

A With my approval.

Q All right, with your approval?

A Yes.

Q Look at Exhibit 724, please?

A Is that in the witness book?

Q Not if it's relevant. Actually, it's everywhere. It's everywhere.

A 724 is in the witness book.

Q It's not?

A It is. I have it in front of me.

Q Then, it's irrelevant; put it away. I'm kidding, I'm kidding. 724 is a November 7, 1992 memo from Wendy Tong Barnes to John Huang and Stephen Ng; correct?

A Yes.

Q And, Wendy Tong Barnes is who?

A She was a member of my staff.

Q And, this talks about the communications--this talks about Wharf Communications/U.S. links, right?

A Yes.

Q Now, we're talking now about Wharf Communications Investment Limited, not Wharf Cable. Right?

A No.

Q We're not?

A No, were not talking about Wharf Cable; we were talking about Wharf Communications and its subsidiaries.

Q I see. I don't see the part about the subsidiaries, but nevertheless, it says, "The following are Wharf Communications/U.S. links and it's got strategic partnership with UIH and NYNEX. "Right?

A Yes.

Q And, those were the only two strategic partnerships you had at that time, correct?

A Those were the only U.S. strategic partnerships we had at that time because this whole memo relates to U.S. companies that we were doing business with.

Q Okay, fair enough. Now, look, if you will, please--we're going to jump forward in time a little bit--at Exhibit 1009.

A Let me get it first, excuse me.

Q This is a letter--I'll wait until you get there.

A Yeah, I got it.

Q You there?

A Yes.

Q This is February 2, 1993. It's actually two letters. One is from Lanny Huang to a Mr. William Hooks of HBO. And, the other one is from Mr. Huang to a Mr. Douglas Lee of Fox International. Do you see that?

A Yes.

Q Both of them dated February 2, 1993. Do you see that?

A Yes.

Q Okay. And, in those letters, the same language appears. "As I mentioned previously, our strategic partner, United International Holdings, has been integral to the development of Wharf Cable's implementation plan. UIH's activities have involved both programming and network applications." Do you see that?

A Yes.

Q True statement to HBO?

A Sorry, what is the question?

Q True statement to HBO?

A A true statement made to HBO?

Q Yeah?

A To the extent that UIH also gave us a--had a letter of intent with us on programming a particular channel, yes.

Q A true statement that they had been integral to the development of Wharf Cable's implementation plan?

A In the context of the meaning of integral, yes.

Q Your meaning of integral?

A Her meaning of integral and my meaning of integral, I guess.

Q Okay. And, the same thing with respect to Fox--telling the truth to Fox?

A Yes. I'm reading the letter. Yes.

MR. CHASE: Your Honor, I'm about to start probably a relatively different subject, although not completely. If you want to advance the break by a couple of minutes.

THE COURT: Okay. Let's take it now.

(2:25 p.m.-Jury excused.)

MR. CHASE: Mr. Jentes had his hand up.

MR. JENTES: Your Honor, I wonder if I could take three or four minutes of your time right now regarding a matter that was ruled on yesterday in which you excluded some testimony from Mr. Ng. In light of some later testimony advanced by Mr. Chase, I'd like to ask Your Honor to reconsider the ruling.

THE COURT: All right.

MR. JENTES: Your Honor will recall that I sought to ask some questions from Mr. Ng, brief in number, that were directed to the issue of what had happened to the cable enterprise in the period since it went operational in the fall of 1993. My initial question related to subscribers, but it was going to lead then into whether the cable project had made or lost money. And, Your Honor ruled that that was not relevant based ont he position taken by Mr. Chase. Thereafter, as you may recall, Mr. Chase cross-examined Mr. Ng and early in the cross-examination, he asked a series of questions. me refresh your recollection. The line of interrogation--and, I'm at Page 5055 beginning at Line 10. Question, "Let me ask another question. Since March 18,

1994, you haven't taken on any cable television partner, have you?" "No, we have not." "And, since March 18, 1994, you haven't taken on any telecom partner, have you?" "No, we have not." "Any partners?" "And so, Wharf owns the whole shooting match, right?" "Yes." "And, the whole shooting match is the cable tv system now a telecom system, right?" "If you describe that as a shooting match, yes."

Now come the two questions. "You've got no partners that are going to--you're going to have to share the wealth with, right?"
Answer, "We have no partners that we'd share the upside and the downside with." Question, "All right. And, that's a judgment that you've made as a business that you're going to keep the thing for yourself?" Answer, "It is a judgment that the company has made."

Now, Your Honor, on two grounds, I think that Mr. Chase has opened the door right up to today. He wants, I think, the clear implication for the jury to draw that this is a welthy, profitable company and I think I ought to be entitled to bring out the fact that they have lost some $300 million in operating losses since this activity went operational in the fall of 1993. Also, I'd like to bring out why that has happened and how it has impacted the--because of the subscriber situation. That's reason one. Reason two is I think that the jury, while it will not have to decide the unjust enrichment issue, it is clear that Your Honor has ruled that issues having to do with "unjust enrichment" are relevant for the purposes of presentation to the jury. We heard not only testimony here, but we heard significant testimony in that chart on what UIH recommended and what has happened and we heard it in particular with regard to Ms. May Fung in the cross-examination from Mr. Wilson. He brought his questioning right down to today so that the judgment as to whether or not they had contributed or not to the success of

the Wharf Cable project was tied into events that post-dated the implementation of the project, post-dated the financing memoranda. So, on both of those grounds, I would really like to urge Your Honor to reconsider your ruling yesterday, final point, the interrogation that I'm going to make is going to be directed to really only about two or three questions. What have been the net operating losses and how is that interrelated to the failure of the Wharf Cable project to meet the very optimistic subscriber projections that were in the financing memorandum and, for that matter, in the bid document.

End of my statement, Your Honor.

THE COURT: Thank you. Mr. Chase?

MR. CHASE: Do you need a response, Your Honor?

THE COURT: Yes.

MR. CHASE: Okay. First of all, when I asked Mr. Ng about they don't have partners as of today, the whole point with that thing is to prove what their intent was back in 1994 when they were kicking UIH out the door. We did not get into anything like what Mr. Jentes is talking about about the actual performance of the company which is what he's trying to use to say that the people giving the valuations should consider things that you couldn't know back in 1992 and 1993 and 1994, and that's got nothing to do with that. at most, at most, Mr. Jentes would be entitled to a limiting instruction that the jury is to consider anything after the events only to bear on intent, but it can't consider it for any other purposes. But, that doesn't open the door for him to start putting in evidence of what's actually happened with the business. I'll say again what I said yesterday. How do we know what's going to happen with the business tomorrow,

next month, or next year? That's why the law says you cut it off as of the time of the wrong.

THE COURT: I'm going to adhere to my previous ruling. Thank you.

We'll be in recess.

(2:30 p.m.-Recess accordingly.)

(At 2:45 p.m. on March 27, 1997, with counsel for the parties present, and with the jury present, the following proceedings were had:)

MR. CHASE: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. CHASE RESUMES:

Q Mr. Ng, let me change subjects on you for a minute here. Let's talk about NYNEX pulling out of your project. Do you remember December 1992 when you found out NYNEX was not going to be an investor?

A Yes.

Q And, you remember seeking advice from Mr. Wise as to how you should play that?

A Yes.

Q Okay. And, you've been in Court when I've gone through Mr. Wise's memo as to the advice that he was giving to Wharf with respect to the public relations spin that you should put on this event?

A Public relations what?

Q Well, the way it should be pitched to the government?

A Oh, the way it should be presented to the government?

Q Right. When he's making recommendations such as--and, I'm looking now at Exhibit 887. I'm not going to go through it in detail, but just to put a--he doesn't? He has to. You don't have 887?

A I don't know. I'm looking. I do.

Q You do. Sure, you do. You have 887 there?

A Yes, I do.

Q All right. I'm not going to go through this in the detail that I have before, but Mr. Wise says, "Coming to the more immediate actions, my advice would be to keep any explanation to the minimum; if possible, zero." Do you see that?

A Yes.

Q And, above that, he says, "Overall, I should prefer"--and this is Paragraph 7. "Overall, I should prefer to see as little volunteered about this as possible. That is to say our stance should be that everything is on course. NYNEX and UIH are to be providing full technical support and specialist management expertise just as we said."

Do you see that?

A Yes.

Q And, over on the last page, Mr. Wise talks about that--"If the above corrective measures need to be taken, it seems

to me that a key element would be to retain the impression that Wharf and its strategic partners remain on the closest and more cooperative terms." Do you see that?

A Yes.

Q Okay. And, without going through the entire memo, that fairly summarizes the advice being given to you by Mr. Wise? I guess, it doesn't because Mr. Jentes has something else. But, why don't you answer the question first?

A I need to read the memo before I can answer the question.

Q All right. Then, before you do that, why don't you let Mr. Jentes--he wants me to read something else.

MR. JENTES: Well, let me just read it.

MR. CHASE: Mr. Jentes, why don't you tell me what you want me to read?

MR. JENTES: Okay. All I want to do is read the opening sentence which limits the scope of the document.

MR. CHASE: Oh, okay. "Stephen, regarding the papers went earlier this morning, I have the following comments in the context of the fixed network bid. In this bid, the arrangement with NYNEX is of greater significance than with UIH. So, the following relates mainly to the former."

Q (by Mr. Chase) Right?

A Yes.

Q And, that's because you had--at that time you were getting ready to present your telecom bid; right?

A We weren't quite ready. We were leading up to the telecom bid. The timing was a little bit later.

Q And, NYNEX would certainly be more important for your telecom bid than UIH would be; right?

A Well, certainly, for a telecom bid, but more than that, it appears from this opening paragraph that Mr. Wise's comments related to that telecom bid rather than to the cable tv project.

Q Well, regardless of the fact, what Mr. Wise wants you to do is give the appearance to the government that you and UIH and NYNEX are still on the closest of terms and there's no problem; right?

A The advice he was giving, first of all, principally relate to NYNEX because that was the telecom bid that he was referring to. I don't think--I haven't seen too much about UIH in that context.

Q Well, let me ask it differently. Now, I'm going to read to you a small portion from Mr. Fung's deposition and ask you whether this fairly characterizes the mood of your office at the time you learned of the NYNEX withdrawal.

MR. JENTES: Your Honor, again, I object to this. Why doesn't he just ask Mr. Ng what was the mood rather than showing him testimony from Mr. Fung?

MR. CHASE: Well, Your Honor, it's cross-examination. I should be able to point him in a particular direction.

THE COURT: Yes. Overruled.

MR. CHASE: Thank you.

Q (by Mr. Chase) Mr. Ng, this is Page 566.

A Of?

Q Of Mr. Fung's deposition and you're going to have to follow me on the screen here.

A Oh.

Q Are you there? Line 14, "Now, at the time you learned of the NYNEX pullout, was there a concern at Wharf that this would perhaps influence UIH to pull out from the project?" Answer, "I think that that had been asked as a potential question." Question, "Asked internally?" Answer, "Within Wharf, yes, internally." Question, "Well, it would have been a matter of concern if they had pulled out at that time, would it not?" Answer, "I mean we were concerned whether that would trigger any action on the part of UIH; yes."

And then, I'll ask you to look over--well, you can't look over because you don't have it, but I'm going to turn over to Page 570, still on the same subject, "But, if you look over, for example, at Paragraph 7 on Page 2, if you look at the second sentence of that paragraph it says, "That is to say our stance would be that everything is on course. NYNEX and UIH are to be providing full technical support and special management expertise just as we said." "Do you see that?" "Yes." "Now, UIH was providing technical support and specialist expertise primarily in the cable area, was it not? Answer, "Correct." Question, "In Mr. Wise's statement about UIH, there was a true statement as to the time of this

memo; correct?" Answer, "Correct." "And, UIH continued to provide those kinds of services after the date of this memo; correct?" Answer, "What services again?" Question, "Well, the services described by Mr. Wise and that is full technical support and specialist management expertise." Answer, "Yes." Question, "And, it was important to Wharf that the Hong Kong government perceive that UIH was providing those services; correct?" Answer, "Yes."

Now, do you see that portion of Mr. Fung's testimony?

A Yes.

Q And, did Mr. Fung accurately describe the view at Wharf regarding its relation with UIH at the time of the NYNEX pullout?

A I don't think so. The mood at that time was very much, oh, gee, NYNEX doesn't go forward. What do we do? We're back to square one. The three companies had been negotiating a three-party joint venture; now, one of the parties decided not to go forward. We're back to square one. All the work that had been put into it would be wasted. All of us would need to go back to the drawing boards; we, Wharf particularly. We would need to go back to the drawing boards. Whatever work that had been done by any party up to that time would need to be put away and we start a new page and we start a new dialogue and we start a new negotiation. So, that was the mood that I think I can describe at the time of this NYNEX decision. Back to square one.

Q Mr. Ng, let me--I wasn't asking you about the transaction or the dealing or the three-party agreement or any of the things you want to talk about. Let me just put in front of you one question and one answer that I think summarizes Mr. Fung quite adequately and ask if you agree with it. This

is on Line 11, Page 571. "And, it was important to Wharf that the Hong Kong government perceive that UIH was providing those services; correct?" Answer, "Yes."

Do you agree with Mr. Fung when he makes that statement under oath in this litigation?

A No, because Mr. Wise's comments relate to the fixed network bid and UIH had no specialist expertise or experience to bring to telecoms.

Q So, you don't agree with what Mr. Fung testified to?

A I don't agree with that in the context of this fixed network bid. This is Mr. Wise's memo.

Q All right. Now, after finding out about NYNEX, you prepare your lines to take memo. Do you remember that, Exhibit 918?

A Yes.

Q Now, this is the one where you prepared a line that you're going to take with UIH and the line that you're going to take with the staff and the Hong Kong government; right?

A Yes.

Q And, you drafted up--you review it with Mr. Woo and he makes his changes, right?

A Yes.

Q All right, . Now, look at Exhibit 918 and that's a document--you deliver this to Mr. Woo on the 5th of January 1993?

A yes.

Q Now, we probably ought to get your deposition handy. I have no doubt I'm going to need it. Do you have Volume II there?

A No.

THE CLERK: No, you hadn't said.

MR. CHASE: Oh, I'm sorry, Volume Ii. He's going to need it.

THE CLERK: Volume Ii dated 20 June 1995.

THE WITNESS: Thank you.

Q (by Mr. Chase) All right. I'm going to work off of your draft without Mr. Woo's alterations because it's easier to read. Of course, now, you've got my underlining and I should point out for the record that any underlining and bracketing on this draft I'm showing you happens to be mine,

A Yes.

Q Now, at that point in time, you had no basis for saying that NYNEX still likes the project, did you?

A Yes.

Q Turn to Page 451 of your deposition, Line 21, please?

10 Are you there?

A Yes.

Q Okay. Let's do it so the whole world can see it. Question, "What did NYNEX tell you about whether they would ever be interested in investing in Wharf Cable?" Answer, "I don't remember" Question, "Did they indicate to you that they may be interested in investing some other day?" Answer, "I don't remember."

Now, let's go on to the next part of your lines to take here with UIH. You go on to say in there that--I'm going to focus on that part of it. "However, NYNEX has also decided to continue to fully support the application and the project, both generally and the telecommunications aspects in particular under the Technical Cooperation Agreement, and would welcome an opportunity to consider equity investment in the future. Wharf values highly the strategic strength NYNEX brings to the project."

Do you see that?

A Yes.

Q Now, NYNEX had never provided any services under the TCA prior to that time, did they?

A The TCA itself for the cable project would not kick in until license award, but NYNEX had been providing a lot of services outside of the TCA.

Q In fact, NYNEX even after this announcement never provided services under a TCA, did it?

A Well, as I said, the TCA itself was not taken until June1--license award which was June 1, 1993.

Q So, when it kicked in--

A But, they considered to--sorry, they continued to provide services outside of the TCA.

Q Okay. So, they never did provide anything under the TCA and neither did UIH, as a matter of fact; did they?

A I don't believe UIH provided services under the TCA either, but they provided services outside of the TCA.

Q Okay. Then, you go on in this line with UIH. "Wharf also values highly the strategic strength UIH brings to the project and would welcome UIH's continued participation through the Technical Cooperation Agreement." Do you see that?

A Yes.

Q And, UIH never, ever agreed to cooperate in your project through the Technical Cooperation Agreement, did they?

A They did. By signing the Technical Cooperation Agreement, they did.

Q Well, other than the fact that you've got the signature, you have absolutely no conversation or anything else about this TCA that were the basis of that statement in that memo?

A I disagree. The Technical Cooperation Agreement was a document that was carefully negotiated. My principal negotiator, Mr. Emil Fung, spent a great deal of time negotiating that with UIH's principal negotiator.

Q Why don't you look over at Page 456 of your deposition, please? Look at 456, Line 4.

A Yes.

Q Question, "And, at the time you wrote this line to take, what was your understanding as to whether Wharf or UIH had any intention to ever activate the Technical Cooperation Agreement?" Answer, "I'm sorry, I do not remember."

Now, look over please at Page 460.

A 460.

Q I'm looking at Line 16.

A Right.

Q Question, "Look at the next sentence where it says, 'NYNEX and UIH will continue to give full support to the application and the implementation of the project under the Technical Cooperation Agreements.' Do you see that?" Answer--

A Yes.

Q Well, that's the question--

A Oh, sorry.

Q Answer, "Yes, I do. "Question, "As of the time you drafted this memo, had UIH agreed to give full support to the application and implementation of the project under the Technical Cooperation Agreement?" Answer, "I don't remember."

Those were the questions and those were your answers with respect to that, correct?

A Yes.

Q Now, getting back to your line to take here, if you look down at the line to take with the Hong Kong government?

A Yes.

Q That's Point 2. It says, "Wharf has reviewed the ownership issue with its strategic partners and agreed not to introduce any new, in essence, non-wharf shareholders at least until after service launch."

Do you see that?

A Yes.

Q Now, you wrote this on December 24, 1992; right?

A Yes.

Q And, on December 24, 1992, that statement was false; wasn't it?

A It was, but this was a draft. This is something that we would, first of all, agree internally within Wharf and, if it was agreed within Wharf, I would then take it to UIH for verification and confirmation which I did eventually in the middle of January 1993.

Q Now, are you saying that sometime in the middle of January 1993, someone from UIH was told this line to take with the Hong Kong government?

A Yes, definitively.

Q And, that would have been Mark Schneider; is that what you were going to say?

A Mr. Mark Schneider.

Q And, you're telling me that Mr. Mark Schneider agreed with you about what's contained within that paragraph?

A Mr. Mark Schneider did not disagree with me.

Q And, he agreed with you that NYNEX and UIH will continue to give full support to the application and the implementation of the project under the Technical Cooperation Agreement. Is it your testimony that Mr. Schneider agreed with that in January 1993?

A It is my testimony that Mr. Schneider agreed for us to take this so-called line to take with our staff, with Hong Kong government, with Hong Kong public, and Wharf shareholders. I did this with Mr. Schneider's agreement.

Q So, it's your testimony that this line to take was reviewed by UIH and you did it with their agreement?

A It is my testimony that this line to take, as revised-I'm sorry, one clarification. As revised, the final line to take was cleared with Mr. Mark Schneider in a telephone conversation in the middle of January 1993.

Q All right. Let me just call your attention to one reference here. There will be others as we move ahead. Look at Page 162. That would be in Volume I of your deposition.

THE CLERK: Volume I, 19 June '95.

THE WITNESS: Thank you. Page?

Q (by Mr. Chase) 162.

A I am on 162.

Q And, down toward the bottom, Line 22, it's talking about the dinner you had with Mr. Schneider and Mr. Elsner on December 1, 1993, almost a year later. Do you see that?

A I see Line 22, yes.

Q And, it says, Question, "At the time of this dinner with Mr. Schneider and Mr. Elsner, had you reviewed the TCA?" Answer, "I don't remember. "Question, "Prior to this dinner in 1993, had you ever discussed with any UIH representative--did you ever discuss the TCA with any UIH representative?" Answer, "I can't remember."

Do you see that?

A Yes.

Q Now, those were true statements by you at the time of your deposition?

A Yes.

MR. CHASE: Do you want to read something else?

MR. JENTES: Do you want me to read it or do you want to read it?

MR. CHASE: Tell me where; I'll read it.

MR. JENTES: I'd like to start on 495 at Line 11 that relates to this exhibit that you had beforehand, the lines to take, and you can read forever from that point on, but as far as I'm concerned, I think that probably it ought to be--

MR. CHASE: Well, Mr. Ng--

MR. JENTES: Excuse me. It's probably down through Page 498 at Line 7.

MR. CHASE: Well, I'll tell you what. I'm going to cover that whole subject, but I'll be glad to read that right now and then we'll go into that subject. 495, where?

MR. JENTES: I'm sorry, 495, Line 11.

MR. CHASE: Okay. 495, Line 11, I say, "Let me ask you to look at Exhibit 2513. This is a handwritten note that appears to be from you to Mr. Fung dated January 14, 1993 regarding a conversation with Mark Schneider. Would you look that over for a minute, please?"

MR. JENTES: Would it help the jury if they knew what Exhibit 2513 is?

MR. CHASE: Well, I don't want to have to stop my examination and do four pages of testimony and exhibits. Which do you want?

MR. JENTES: No. Just when it says Exhibit 2513, they don't know what that is.

MR. CHASE: Well, Your Honor, I don't like to have this colloquy with counsel. We'll get to this--

THE COURT: Exhibit 2513, does it have a Trial Exhibit number?

MR. CHASE: Yes, it does.

THE COURT: Then, let's give that so the jury knows what it is and go on with your examination.

MR. CHASE: Okay. Why don't you give me a second and I'll locate it.

THE COURT: All right.

(Pause.)

MR. JENTES: It's TX-951.

MR. CHASE: That's right. TX-951.

Q (by Mr. Chase) Okay. Back to the examination. "Let me ask you to look at Exhibit 2513. This is a handwritten note that appears to be from you to Mr. Fung dated January 14, 1993 regarding a conversation with Mark Schneider. Would you look that over for a minute please?" "Right." "Okay. That is your handwriting, correct?" "It appears to be, yes." "Okay. Do you recall the conversation with Mr. Schneider described in this handwritten memo?" "I recall having a conversation with Mr. Schneider by telephone refered to in this handwritten memo."

Down at the bottom, "And, this was on or about January 14, 1993?" Answer, "That is correct." "Do you recall what you said to Mr. Schneider in that telephone call?" "I generally recall that I said to him the statement that was prepared previously for this conversation." Question, "I'm sorry, the statement that was prepared previously. You mean

the lines to take?" Answer, "The lines to take." "So, did you--what, read him the line to take with UIH that we were talking about in Exhibit"--blah, blah, blah.

You don't mind me skipping. I'm looking around--okay, 2112. "i believe I substantially read to him the so-called line to take with UIH." "Did you read to him the edited version, the one that was edited by Mr. Woo?" "The version which was finalized, that's the version I would have read to him." "And, as the finalized version finalized in accordance with Mr. Woo's changes that are indicated in this page?" Answer, "It appears to be the case." "How is it you remember that you read this to Mr. Schneider?" "Because that was the intent. I intended to read him the line to take."

Do you want me to keep reading?

MR. JENTES: Yeah, up to the top of the next page where it says--

MR. CHASE: Okay. "Okay. And, you believe that you read to him substantially verbatim what appears on the third page of Exhibit 2112. Is that right?" Blah, blah, blah. "And, did you tell him anything else in that conversation?" "I'm sure we had a discussion about it, too." "Do you remember anything about that discussion?" "Not well." "Do you have any recollection of that discussion?" "As I said, I recall that we had conversation." "Wait a minute. I'm trying to find out what conversation. You say you believe you read him the line to take with UIH; right?" Answer, "Yes, sir. "Question, "Do you have a specific recollection of that or do you just believe you did that?" Answer, "I have a specific recollection." "So, sitting here today, you can remember reading that over the telephone to Mr. Schneider?" "Substantially reading that." "And, do you remember anything else that you said in the conversation?" "I said to

him other things. For instance, I said to him I wold be in London in a week's time or so. And, I said to him i've been trying to reach you since January 4." And, so on and so forth.

Do you want me to keep going?

MR. JENTES: No.

MR. CHASE: Okay.

Q (by Mr. Chase) Now, first of all, Mr. Ng, you remembered that fact out of the sea of facts that you didn't remember at your deposition; right?

A I'm sorry, can you ask the question again?

Q Well, the jury has been treated to about five hours of you deposition where you testified "I don't recall" "to almost every question.

MR. JENTES: Object; argumentative, Your Honor.

MR. CHASE: Well, I'm going to frame a question here.

THE COURT: Let's--I don't know that it's five hours and I think that's probably hyperbole.

MR. CHASE: I kind of wish it was, but I think--

THE COURT: Right.

MR. CHASE: Okay.

Q (by Mr. Chase) They've been treated to a number of--a lot of deposition testimony, Mr. Ng, where you didn't recall

an awful lot. Yet, you recall this fact; that you read him the line; right?

A First of all, again, Mr. Chase, we've got to put things in context. My deposition was a lot longer than five hours and there were many other things that I did recall. In this particular instance, I could recall quite well because there was a note that I had prepared before my telephone conversation with Mr. Mark Schneider and my intent was to read from the note. So, this was not something that I just talked without any script. I had a script, so to speak.

Q So, you read him the a script, line to take with UIH?

A I had a script prepared; "script ".

Q Now, in your testimony that I just read, the lengthy testimony, it didn't say a word about you reading him line to take with Hong Kong government, did it?

A I did not testify--in my deposition, I did not make any distinction between the line to take with UIH or the line to take with the Hong Kong government and so on and so forth. When I use that term "line to take", I was referring to the note which included both parts.

Q Well, I don't want to quibble with you, Mr. Ng. But, at least in two places where I read it, you said you read him line to take with UIH. But, I'll tell you what. I'll give you this because I want to move it forward. Why don't we talk about this note that you've talked about. Let's talk about this note. Look at Exhibit 951.

A Right.

Q Do you have it?

A Yes.

Q All right. Now, this is dated January 14, 1993 and it references speaking with Mark Schneider, no violent reaction. Do you see that?

A Yes.

Q Now that, of course, doesn't say anything about having read him a line to take, right?

A That, of itself, does not.

Q And then, it goes on to say, "I suggested defer ownership discussion, but he wanted to leave the door open." Do you see that?

A Yes.

Q It doesn't sound like he agreed with you, does it?

A He did not agree--it didn't sound like he accepted that on that particular point.

Q Well, in your line to take, you say we reviewed the line to take with the Hong Kong government. We've reviewed this with our strategic partners. We agree. UIH didn't agree with that, did they?

A I don't see any contradiction between what I have written in this note and the line to take. My recollection based on this note is that he did not have a problem with the line that we were going to take with the Hong Kong government, but he wanted to explore independent of that line to take other opportunities. Now, once the NYNEX was

made, it was back to square one. So, we needed to explore a new basis.

Q You're telling us that Mr. Schneider agreed with you at that time that it's all back to square one?

A I am not testifying that I used that expression in the telephone conversation. I'm testifying--and, I testified 10, 20, 15 minutes ago that I read the line to him and I had his concurrence to use those lines--rather I had his concurrence to use the Hong Kong goernment line.

Q In fact, you had already delivered that line to the Hong Kong government before you even spoke with him, didn't you?

A Not that I can recall.

Q Okay. Well, I'll tell you what. You agreed to meet Mr. Schneider in London, right?

A Yes.

Q And, you went to London, right?

A I went to London after the Jerrold and Scientific Atlanta negotiations which was conducted in Watford, England just outside of London.

Q Okay. And, you met with Schneider and Fries and D'Ottavio and Mark Booth, correct?

A Yes.

Q Now, Mark Booth sent you a letter following that meeting.

A Yes.

Q Look, please, if you will, at Exhibit 982. Now, Mark Booth, we haven't talked much about him. He was one of UIH's programming specialists; correct?

A He was introduced to me as one of UIH's programming executives.

Q All right. Look at Exhibit 982, please?

A I'm on 982.

Q Okay. Now, this is Mr. Booth's letter to you, January 26, 1993, subject: London meeting. Right?

A Yes.

Q Okay. Now, Mr. Booth was there with you and Mr. Schneider and he writes to you, "We all enjoyed getting together with you in London and found the meeting to be a very useful exchange of ideas about how to maximize the value of the Wharf/UIH investment in Hong Kong. The purpose of this note is to review the key issues discussed and the followup required."

Do you see that?

A Yes.

Q It doesn't sound like Mr. Booth understood anything about going back to square one, does it?

A What do you mean?

Q When Mr. Booth is talking to you about the exchange of ideas about how to maximize the value of the Wharf/UIH investment in Hong Kong?

A Well, we were still anticipating that hopefully we'll be able to find a new basis for Wharf and UIH to invest together. The--

Q Well--I'm sorry, I didn't mean to cut you off.

A So, that was the intent of the parties. We were back to square one. We've got to find a new basis. Let's work to find a new basis including maybe finding a new telecom partner, maybe doing other things. So, the intent of the parties was still if there was a way we can make tihs work, let's try.

Q And, when you talk about a new basis, Mr. Ng, UIH was inquiring as to whether they could increase their 10 per cent because NYNEX was not interested in the project; right?

A Right.

Q And, you were concerned about increasing them over 10 per cent because if you brought in a telecom partner, they may want some of that percentage?

A Well, not only that. The basic issue was this. Let's say the project cost $500 million in rough numbers. At the end of December, it was our intention to invest 70 per cent.

So, we would put up 350 million. It was our intention that UIH would invest 10 per cent, say 50 million. It was also our intention that NYNEX would invest 20 per cent, say 100 million. Suddenly, NYNEX says I'm not investing 100 million. So, somebody has to find $100 million to fill that

gap. Unless and until somebody finds $100 million to fill in the gap, there is no basis. We could find a new basis and that's what I'm talking about. Who was going to put up the $100 million and under what terms and conditions.

Q Mr. Ng, as of this point in time, Wharf was the 100 per cent shareholder, correct?

A As of this point in time, absolutely.

Q And, Wharf had committed to the Hong Kong government, to its shareholders, and to everybody else that it was prepared to underwrite the entire cost of the project; corect?

A Yes.

Q And, that means that if Wharf decided not to have partners, it was going to have--assuming a $500 million project, 500 million into the project?

A Yes.

Q Now, whether Wharf sold off stock to UIH, to NYNEX, to U.S. West, or anyone else, only decreases the amount that Wharf puts up; right?

A Yes, but there was a big difference. The difference is this is my house. I own 100 per cent of it. If suddenly there is somebody else in my house with 10 per cent, that changes the whole dynamics of it. You're talking about introducing something into your private property. Now, we were quite prepared to do that when we had to invest $350 million. But, if we have to invest $450 million to still have somebody else

in my house, that's a difference in there all together, Mr. Chase.

Q Well, UIH--first of all, we can talk about houses and inviting people and all this kind of stuff or when the invitation was made. But, the point of the matter is UIH wanted to increase its percentage so that it was going to pick up some of that difference that NYNEX was leaving, didn't it?

A It indicated its interest to do so.

Q It repeatedly indicated that interest.

A It did, but first of all, UIH even at that time was not able to show us they had the financial capability to take up 10 per cent, let alone 20 per cent.

Q So--

A Secondly, when we have somebody in the house, we need house rules and so on and so forth. And, we made it quite clear all along that the house rules can be written only if there are two other shareholders, two--NYNEX and UIH or somebody else, two other shareholders. When there's only one other shareholder, you cannot write house rules which could maintain a balance between the majority shareholder and the minority shareholders.

Q Mr. Ng, I realize you like to give that speech and I like to play your video about what you didn't tell UIH about NYNEX. But, what I'm trying to do is move the ball forward here a little bit. What I'm trying to do is ask you whether UIH repeatedly indicated to you that it wanted to step forward and pick up some of the interest that NYNEX wasn't going to be taking?

A It repeated that interest on a couple of occasions.

Q All right. Now, getting back to Mr. Booth's letter, Mr. Booth gives quite specific programming suggestions in this letter, does he not?

A The two pages of what you call specific programming information?

Q Well, he goes into some discussion in detail about his thoughts for developing programming.

A Well, philosophy principles and so on, wherever that's written here.

Q Right, okay. And then, he concludes about your London meeting. "The meeting was a constructive exchange of ideas on how the programming side can be improved. The key from UIH's perspective is to insure a form is created very quickly to address the programming side of the business. Many suggestions have been put forward which require Wharf's review and response. M. Booth is scheduled to be in Hong Kong next week to move the project forward."

Do you see that?

A Yes.

Q Now, reads like somebody that thinks they're involved in a project, doesn't it?

A That was his view and we--as I said, we were still interested in finding a new basis to work with UIH.

Q Did you write Mr. Booth back and say, hold on, you're not part of this project. We're looking for new house rules here.

A I don't remember writing him.
Q Let's look at Mr. Schneider's letter to you of February 12, 1983, Exibit 1041.

A Right.

Q February 12, 1993, Mr. Schneider to you regarding again your London meeting. "I just wanted to follow up on our London conversation on a number of points. First, I'm delighted at the progress we seem to be making in improving the business plan on the network side of the business. I know that you and Mark Booth will be discussing methods of making similar improvements in programming where we remain in a difficult situation."

Do you see that?
A Yes.

Q Sounds like somebody that's involved in your project, doesn't it?

A He was interested in involving in our project, but the context is that Mr. Schneider and Mr. Booth knew at that time that we were not going to decide on ownership issues until after station opening. So, whatever they did at that time, they knew what our intention was.

Q Well, Mr. Ng, you keep saying that, but what I'd like to do is get specific with you as to what the parties are saying to each other.

A Okay.

Q And, let's look at this second paragraph where Mr. Schneider says, "Second, we have had some recent success in improving our financial strength and would like to discuss having a stake in the venture in the 25 per cent rane provided that NYNEX is not going to participate in the business as an investor." Do you use that?

A Yes.

Q Okay. So, that confirms what you and I were just talking about that UIH would like to up its 10 per cent, 15 per cent, more up to 25 per cent.

A Yes, I agreed with that earlier.

Q Okay. Now, the ownership issue that UIH was discussing with you was just that. How much ownership UIH could get over and above 10 per cent; right?

A The ownership issues that UIH wanted to discuss with us was just that. But, to us, all the conditions that we had set from Day 1 had not changed one bit.

Q Okay. So, what you're saying is you've got UIH on the one hand that wants to discuss going from 10 to 25 and you've got you on the other hand that doesn't want to discuss anything.

A Well, I told them that no decision would be taken on the ownership until after station opening. At no point in time did I tell them, well, we don't need a telecom partner anymore. We don't need shareholder's approval. We don't need written agreement. We don't need this, we don't need that. Remember, these conditions were always on the table.

Q Well, Mr. Ng, I'd like you to look over at Mr. Hudon's letter to you, Exhibit 1022, of February 5, 1993.

A Yes.

Q And, in that letter, it's actually to Mr. Fung with a copy to you.

A Yes.

Q And, it talks about the various banks that Mr. Hudon was dealing with and trying to arrange financing, right?

A Trying to arrange financing for what?

Q Well, first of all, it starts out, "I spoke with Stephen early this week regarding a followup to the various banks that we have approached concerning an Asian trip."Do you see that?

A Yes.

Q And then, on the second page of the document, Mr. Hudon goes on to say, "We have had discussions with a number of perspective equity investors for Ui-asia. At this point, we are unable to proceed with any of these prospects until we have an investment business plan for Hong Kong. I would like to update the various groups we are talking to regarding our expectations for timing of a final business plan. Any guidance you could give me on this matter would be very helpful. I will await to hear from you before contacting any of the banks or equity prospects."

Okay. Do you see that?

A Yes.

Q Now, Mr. Hudon obviously didn't get the message that you were not talking about ownership anymore.

A I did not speak to Mr. Hudon directly. And, as I said, the intent was still to find a new way to co-invest with UIH.

Q Look at Exhibit 1025, please?

A Yes.

Q This is a memo from you to Mr. Fung regarding Bill Hudon's fax and that's the one we just looked at, right?

A Yes.

Q And, it says, "Timing"--that's my underscore, not yours; so, don't worry about it--it's my star out on the right, not yours. "Timing of investment needs to be managed. We need to manage expectation at both UIH and the banks." Do you see that?

A Yes.

Q And then, he goes on to say, "Given, one, what do we want the banks to do on this next trip and for who, Wharf Cable or UIH, debt or equity?" Then, you go on to say, "Be careful; politically sensitive." Do you see that?

A Yes.

Q So, you were talking about the timing of investment, not the fact of investment. Right?

A The conditions of investment have always been the same.

Q Mr. Ng, answer my question, please? You were talking about the timing of investment, not the fact of investment? We all understand that you think there's conditions here.

In this note and in Paragraph 1 specifically, I was only talking about the timing of investment.

Q And, you weren't telling Mr. Fung to get back to Mr. Hudon and say, hey, look, we're back to square one. We've got to find a new basis. All bets are off.

A Not in this note. Not in this note. I think that's the differentiation I need to make.

Q Well, now, we're up to February 6, 1993 and you're talking about managing expectations and its politically sensitive, right?

A Yes.

Q And, it would have been just as easy to tell him we're back to square one, new basis?

A We had told--I had told Mr. Mark Schneider in the middle of January 1993. In my mind, it was very clear in my mind he should have understood it. We don't go into every meeting to tell them the same thing, just as I don't come into this courtroom every morning to tell you that my name is Stephen Ng and that I am testifying under oath.

Q So, your answer is you did not instruct Mr. Fung to go back and tell Mr. Hudon that you were talking about a whole new basis, the deal is off?

A Not in this note.

Q All right. Now look, if you will, please, at Exhibit 1075. Exhibit 1075 is your memo back to Mr. Schneider?

A Yes.

Q Where you are responding to his second point about going to 25 per cent and you mention, "I mentioned to you in London that given the NYNEX situation, we should put ownership issues on hold until after the service launch." Right?

A Yes.

Q All right. Now, the ownership issue that Mr. Schneider was talking about was moving his percentage from 10 per cent to 25 per cent. Right?

A No, all ownership issues.

Q Well, you just testified a moment ago that as far as Mr. Schneider was concerned, the ownership issue was how much more than 10% could he get.

A Well, first of all, even as of that time, he did not have ownership in the first 10 per cent. Nobody other than Wharf had ownership in Wharf Cable. Let's make that clear.

Q Well, we understand that nobody had the 10 per cent ownership. What we're talking about is UIH's rights and expectations in this case. You understand that?

A Rights?

Q And, expectations? I don't expect you to agree with me that there are any, but you understand that that's what this case is about.

A I understand some claims have been filed relating to UIH's expectations and so on and so forth. I don't want to go into the language of it.

Q All right. I don't want you to think I'm tricking you because I'm not trying to get you to say UIH owned 10 per cent interest at this time. They didn't.

A Okay.

Q Everybody in this room knows that.

A Okay.

Q The issue is not that. The issue is rights and expectations. Do you understand that?

A I understand what you're saying.
Q All right. Now, as Mr. Schneider understood it as of this time, it was a 10 per cent right and he was talking about moving it up to 20 or 25 per cent; right?

MR. JENTES: Object, Your Honor. I don't know how Mr. Ng knows "at this time "what Mr. Schneider understood.

THE COURT: The objection is overruled.

THE WITNESS: As I said, UIH did not have a right.

Q (by Mr. Chase) Well, we understand you're saying that. But, what I'm trying to get at is your perspective on Mr. Schneider at this time?

A So, the question was?

Q I'll tell you what. I'll ask a different question. Go to Exhibit 985. These are your notes of London.

A Right.

Q You there?

A Yes.

Q Meeting notes, "SN met with Mark Schneider, Mark Booth, Mike Fries, and part time Dave D'Ottavio."Do you see that?

A Yes.

Q And, these are your notes of your meeting with these people, right?

A Yes.

Q Nothing in there about no ownership issues, new basis, deal's off; nothing in there about that, is there?

A No, because that was not an action item. This note says very clearly in Paragraph 2, "action items". Ownership was not an action item. There was no action until October station launch.

Q Well, actually, that's Paragraph 2. Paragraph 3, something else, and Paragraph 4, something else. Right?

A Those are other points that could be actioned.

Q Okay. And, these are your notes of that meeting with these people?

A In relation to the action items.

Q And, let me ask you this. You never responded to Mr. Booth's letter telling him that when he references you as their partner that you are not their partner?

A I do not remember writing to him to respond. I don't whether I spoke to him either by telephone or in person when he was in Hong Kong.

Q Look, if you will, please, at Exhibit 1197.

MR. JENTES: Your Honor, before we jump away from TX-1075, could we read the Paragraph 2 which is Mr. Stephen Ng's response to Mark Schneider as of February 27, 1993?

MR. CHASE: We read that. I'll read it again.

MR. JENTES: I didn't hear you read it.

MR. CHASE: When Mr. Mark Schneider mentioned to you in the previous letter that he wanted to move his interest from 10 per cent to 25 per cent, you responded, "I mentioned to you "--

MR. JENTES: Wait a minute. I object to all this lead up. All we have to do is read what he said in the letter.

MR. CHASE: Well, I'm asking the question and then I'm going to read it.

THE COURT: Overruled.

Q (by Mr. Chase) This is your response to Mr. Schneider's statement that he wanted to move up to 25 per cent. "I mentioned to you in London that given the NYNEX

situation, we should put ownership issues on hold until after the service launch."That was your response, correct?

A This was my response to his letter, the earlier letter or memorandum.

Q And, the earlier letter said, "Given our improving financial picture, we'd like to do 25 per cent." That's what the letter said, right?

A But, what I said here was something that I said to him before this memorandum was written.

Q All right.

A This is what I said to him in London at the end of January.

Q You don't have any record of having said that to him in London. It's not in your notes, it's not anywhere else, is it?

A This is a record of what I said.

Q That you write a month later in response to his letter about wanting to go 25 per cent?

A At least, I wrote it down. I think it was important, I wrote it down. If it's important to me, I will write it down.

Q All right. Turn to Exhibit 1107. Exhibit 1107, agenda. "United International Holdings, March 18-19, 1993, Agenda." Do you see that?

A Yes.

Q Now, this agenda was prepared by your company, correct?

A I think so.

Q Produced from your company's files, right?

A Yes.

Q And, this relates to a dinner on the 18th and then a full day of meeting on the 19th with UIH representatives and then another dinner on the night of the 19th; right?

A Yes.

Q And, it relates to a variety of issues; business plan and financials, cable ops, tv ops, various things, and then dinner at the Marco Polo Hotel to continue corporate discussion on shareholder issues, organizational structure, financing strategy, UIH team, and that would be--you and Mr. Fung would be there. Right?

A At the dinner, yes.

Q Were you there?

A I think I was.

Q Do you remember being there?

A Yes.

Q And, do you remember the subjects during the course of that day covering all of these subjects with UIH?

A I did not attend all of those meetings or, if I did, I did not sit through all of the meetings.

Q Well, let's look at what came out of that. Look, if you will, at Exhibit 1127.

A Right.

Q Exhibit 1127 is from Mr. Schneider to you and Mr. Fung, March 24, 1993. "I really did enjoy and appreciate the time we had last week in Hong Kong. Do you see that?

A Yes.

Q And then, over on the second page, Mr. Schneider says, "Finally, I think we did make some progress provided your board can agree with the general terms we discussed on Sunday. I anticipate Mike and Emil will be talking and corresponding frequently with the idea of finalizing our terms of agreement by April." Do you see that?

A Yes.

Q Now, at that meeting, you had discussion about UIH moving its percentage up, right?

A We may have. I have no specific recollection about moving the percentage up.

Q And, you had discussions about Mr. Fung and Mr. Fries sitting down and modifying the former three-party documents to make it a two-party deal; right?

A I do not have that specific recollection.

Q And, you agreed that you would do that by April 1993; correct?

A I do not have that specific recollection.

Q Look over at Exhibit 1152, please; Mr. Fries 'letter to Mr. Fung?

A Sorry, that's another book.

Q Another book.

A 1152, is that right?

Q That's correct. That's Mr. Fries 'letter to Mr. Fung, April 30, 1993.

A I'm on that page.

Q All right. Now, again, "Dear Emil, when we last met in Hong Kong, we agreed that we would try to formalize the Wharf/UIH relationship by the end of April."Do you see that?

A Yes.

Q And, that is, in fact, what you agreed in those sessions that you had with UIH in March?

A I have no specific recall, as I said.

Q Fries wouldn't be making this up, would he?

A I have no basis to answer that question. I don't know.
Q Nobody ever got back to him and said nobody ever agreed to formalize anything; did they?

A I don't know.

Q And, no one said formalize what? What is there to formalize? No one ever said to him don't waste your time, did they?

A I don't know. But, as I said, we were still interested in finding a new basis to work with UIH.

Q All right. Look down at numbered Paragraph 1 on the ownership issue. "Ownership. We left the issue of UIH's ownership in Stephen's hands. He was to bring this up at the next Wharf board meeting. Since we have not heard from you on this, we have changed UIH's ownership right to include up to 20 per cent. Has there been any further discussion of the matter?" Do you see that?

A Yes.

Q Now, Mr. Fung brought this letter to your attention at that time, did he not?

A Yes.

Q Actually, it was copied to you, was it not?

A Yes.

Q All right. And, what Mr. Fries is saying to you and to Mr. Fung in this letter is that we've taken UIH's ownership right of 10 per cent and we've put up to 20 per cent. Right?

A Sorry, the question was?

Q We've changed UIH's rights from 10 per cent to up to 20 per cent?

A In the drafting.

Q And, that's the point you were supposed to take to your board to see whether it could buy off on UIH going from 10 per cent to 20 per cent; right?

A No. I had not take to my board any investment by UIH yet as of this time frame.

Q Well, didn't you tell Mr. Fries and Mr. Schneider and the people that were with you in March that you would take this issue to the board as to whether UIH could go from 10 per cent to 20 per cent?

A No. I said whatever decision on ownership--whatever percentage has to be approved by my board.

Q So, Fries is just making this up?

A I don't know why you're making that conclusion.

Q Well, let me ask you if you'll look over at the second page. Now, Mr. Fries goes on to say, "I'm sure there will be other issues to discuss once you have had a chance to review this. We tried to retain as much as possible from the original document, but as you will agree, we are in a very different situation now."Right?

A Yes.

Q As a matter of fact, you were; right?

A Yes. It was a whole new ball game.

Q Well, you had two parties instead of three.

A Well, from December 1992, it was a whole new ball game, a new ball game played with new rules.

Q Well, and you had Mr. Fung and Mr. Fries taking UIH's 10 per cent and packaging it--or 10 per cent or more and packaging it into a two-party deal instead of the previous three-party deal. Right?

A That was what UIH wanted to do.

Q Well, you were doing it with them.

A We did some drafting with them together, but we never took anything to the board.

Q What do you mean you were doing some drafting with them?

24 It takes two to tango, doesn't it, Mr. Ng?

A That's why we were doing some drafting with them together.

Q Well, were you doing drafting with the intent of having a good faith discussion about formalizing UIH's investment right or weren't you?

A We were. If we could reach a position that we, as management, can be comfortable with and can recommend to the board. And, even then, it would be subject to the board's approval.

Q So, you were in discussions and negotiations with UIH about formalizing the relationship between the two of you at this point in time?

A At this point in time as of April '93, we were--Mr. Fung was in discussion with Mr. Fries about finding a new way for us to work with UIH.

Q Look at Exhibit 1173, if you will, please?

A It's in front of me.

Q All right. Now, this is a memo from Mr. Fries to Mr. Fung. It's dated May 28, 1993. Do you see that?

A Yes, I do.

Q Now, Mr. Fries states in that memo, "I just wanted to know if you and Stephen would be available for a conference call Friday morning, your time around 8:30 or 9:00 o'clock, to discuss the status of the MOU. As you will recall, we planned on discussing this on Friday."Do you see that?

A Yes.

Q Okay. Now, I probably wasn't perfect in my reading there, but you got the substance. Right?

A Yes.

Q All right. So, Fries and Fung are putting this thing together and Fries wants to talk to you and Fung about getting it finished. Right?

A I don't know about getting it finished. It says here to discuss the status.

Q Look over, if you will, please, at 1176.

A I do not have that document, Mr. Chase.

Q I'll get it for you. 1176--well, I'll describe it in a minute.

A Thank you.

Q 1176 is a handwritten memo from Mr. Pittman to you. It looks like it's dated May 30, 1993. Then, you write a note to Mr. Fung on the document. This relates to--let's just deal with what Mr. Pittman says to you for a moment. First, it talks about meeting up with Mr. Keefe. Then, he goes on at the end of the document, he's talking about Mark Schneider. And, he said, "He wanted me to "--

A I'm sorry, is it on the second page?

Q Second page, yeah.

A Oh. Yeah.

Q "He wanted me to inquire about UIH being mentioned in the release as you deemed appropriate. The team in Denver is keen to proceed with formalizing the partnership and are very pleased that the license obstacle is now behind us." Do you see that?

A Yes.

Q Now, mentioning in the release is a mention of the press release about the fact that Wharf was granted the license in June 1, 1993. That's what this must relate to, right?

A I don't know.

Q Well, what else would you be putting out a press release at this point in time that Mr. Pittman and Mr. Schneider would be interested in?

A I don't know. I simply cannot tell from this memo.

Q All right. Well, anyway, Pittman is telling you that UIH leaves it up to you as to whether to mention them in the release and the team in Denver is keen to proceed with formalizing the partnership and are very pleased that the license obstacle is now behind us. Do you see that?

A Yes.

Q All right. Now, you take this and you send it off to Mr. Fung. You say, "Emil, need to deal with UIH issues fairly soon or we may risk ill feeling. Please, send a short reply to Bill on my behalf."And then, you say, "What about the China "--what is that--

A Delegation.

Q --"delegation request from Mark? "Do you see that?

A Yes.

Q Is that what it says?

A I think so.

Q All right. Let's leave that one alone for a minute now and talk about you telling Mr. Fung that you need to deal with the UIH issues very soon or you may risk ill feelings. Right?

A Yes.

Q Now, look over, if you will, please, at 1182. 1182 is a June 3, 1993 memo from Mr. Schneider to you and he's asking, "Just a reminder that you are going to call if you had any questions on the term sheet. We would like to keep this moving. So, please, keep in touch if you have any issues.

Both Bill Elsner and I will be around all this week." Do you see that?

A Yes.

Q And, it was your understanding, was it not, that Mr. Schneider was pushing for a completion of the formalization of the partnership with UIH and Wharf; right?

A Mr. Schneider was pushing for the early inclusion of a term sheet. I don't know about this partnership and so on and so forth.

Q Well, let's look back at Mr. Pittman's memo. When Mr. Pittman says--and it's the same words that were used before, I think, by Mr. Fries. "The team in Denver is keen to proceed with formalizing the partnership and are very pleased that the license obstacle is now behind us." Do you see that?

A Yes.

Q Now, formalizing would mean getting the writing concluded; correct?

A No, not necessarily.

Q Well, at this--

A Formalizing--

Q Excuse me. At this point in time, sir, you had draft memoranda of understanding being passed back and forth between your company and UIH; right?

Q Between the negotiators, yes.

Q The negotiators for Wharf and the negotiators for UIH, right?

A Yes.

Q All right. Now, look over, if you will, please, at 1172.

A Yes.

Q This is your letter back to Mr. Schneider and it talks about Peter Woo being away, reply to a letter, and then it says, "Upon his return earlier this week, Emil briefed me quickly about the discussions with Mike regarding our relationship arrangements going forward. We haven't had a chance to spend time together, so far, and we will do so as final Star, CNN, ESPN, and other contracts get out of the way."

Do you see that?

A Yes.

Q Now, as of this point in time, Mr. Fung had been trying to show you these draft memoranda of understanding; correct?

A I have no specific recall.

Q At this point in time, you hadn't even looked at a draft memorandum of understanding, had you?

A I have no specific recall.

Q And then, on June 28--if you'll look at Exhibit 1199?

A Right.

Q Mr. Fries writes to Mr. Fung, "I have just returned from abroad and finalized the changes to the MOU today. Sorry for the delay. Our lawyers in Denver will take one quick read "--etcetera. Do you see that?

A Yes.

Q Now, it was with your authority that Mr. Fung was doing this with Mr. Fries with respect to this MOU?

A I don't remember giving him specific authority, but he's always been our negotiator. And, this was the time, as the earlier note indicated, we were just awarded the license and so there were a million things happening all the time.

Q And, one of the things happening all the time was your company and UIH were trying to formalize the MOU?

A We were negotiating. Mr. Fung and Mr. Fries were negotiating an MOU.

Q Let me say it differently. UIH was trying to finalize the MOU according to these documents, right?

A According to this document, yes.

Q And, your company wasn't; was it?

A We were too busy. We had--as the board predicted at the beginning of 1993, this was a very busy period which is why the company wanted us to concentrate on opening the station. That was the number one priority. Without that, there is no partnership to talk about. Nobody wants to be in a company that has no business.

Q Just too busy to respond to Mr. Fries at this time, right?

A Well, you've got to put into context. This was a time shortly after license award when were adding 10 people a day every single day.

Q So, the answer is yes?

A The answer was I was not able to give it my personal time.

MR. CHASE: Your Honor, this would probably be a reasonable place if you want to call it at 4:00.

THE COURT: Okay.

MR. CHASE: Thank you.

THE COURT: Let's do and come back at 9:00 tomorrow. Thank you.

(3:54 p.m.-Jury excused.)

THE COURT: Mr. Tully wants to do something.

Mr. Tully: Thank you, Your Honor. If I may just have a minute of your time.

THE COURT: Yes.

Mr. Tully: Assuming that Mr. Stephen Ng's testimony will finish tomorrow, we understand that the plaintiffs are then going to read portions from Mr. William Ng's testimony because they didn't get a chance to in their case. And, I know we don't have time to argue about this today, but the defendants have an outstanding objection to a portion of Mr.

William Ng's testimony regarding moral obligation and Chinese culture and business practices. All I want to do, Your Honor, is just give you a copy of the testimony at issue so you can see it in advance and that way we can talk about it tomorrow if it comes up.

THE COURT: All right.

Mr. Tully: I also want to hand Your Honor a copy of the transcript of the trial in this case in which you ruled on an objection on a question by Mr. Chase and Mr. Woo on the same subject. That way, we'll be ready for when it comes up if, at all, tomorrow.

THE COURT: Okay.

Mr. Tully: Thank you, Your Honor.

THE COURT: Thank you.

We'll be in recess.

* * *

(Viewing of the videotaped deposition of S. Ng 3/27/97; Transcript 5257 [3])

(Whereupon, the following is a transcript of portion of videotape deposition of Stephen Ng played for the jury.)

Q Did you believe that by signing the technical cooperation agreement, you did in fact bond Wharf Cable to obligations under this Agreement.

A Did I believe?

Q Yes.

A I don't remember.

Q You don't remember if you believed you were binding Wharf Cable?

A I don't remember.

Q Did you at any time believe that Wharf Cable was bound under the terms of this agreement?

A I'm sorry, the quest ion was?

Q Did you at any time believe that Wharf Cable was bound under the terms of this agreement?

A Did I at any time?

Q Right, at any time?

A I don't remember.

(Whereupon, the portion of the videotape deposition of Stephen Ng played for the jury was concluded.)

* * *

(Viewing of the videotaped deposition of S. Ng resumed on 3/27/97; Transcript 5258 [3])

(Whereupon, the following is a transcript of the videotaped deposition of Stephen Ng played for the jury.)

Q Prior to this dinner in 1993, had you ever discussed the TCA with any UIH representative?

A I can't remember.

Q What did you mean in your memo here, "They were careful not to take the bait"

A I don't remember.

Q In what way were you using the TCA as bait?

A I don't remember.

Q Do you remember anything at all about why you wrote that sentence in Sentence 4 there?

A Why I wrote it?

Q What it means.

A It means what it says.

Q Why did you want UIH to activate the TCA at that time?

A I don't remember.

Q Why hadn't the TCA been activated up to that time?

A I don't remember.

Q What was the intent of Wharf at the time it entered into the TCA?

A I don't remember.

Q Did Wharf have any intent of ever having services provided it under the TCA?

A As the question again.

Q Did Wharf have any intent of ever having services provided it under the TCA at the time it entered into the TCA?

A I don't remember.

Q What was your intent, your personal intent with respect to the TCA?

A I don't remember.

(Whereupon, the videotaped deposition testimony of Stephen Ng played for the jury was concluded.)

* * *

(Viewing of the videotaped deposition of S. Ng resumed on 3/27/97; Transcript 5259 [3])

(Whereupon, the following is a transcript of the videotaped deposition of Stephen Ng played for the jury.)

Q At the time you signed the TCA, did you have any intent that the TCA would ever become an operative agreement between Wharf and UIH?

A I don't remember.

MR. CHASE: Let's do now to 244, Line 1, same volume, I think. Are you there?

THE WITNESS: Yes.

Q Why did you even bother entering into a technical cooperation agreement with UIH? What was the point of that?

A I don't remember why we entered into the technical cooperation agreement. Presumably, to enhance the bid.

Q To who the Hong Kong government that you would have access to technical expertise in the area of cable television; right?

A Possible.

Q Well, is that true or false.

A I don't remember.

Q You don't remember why you entered into the technical cooperation agreement with UIH?

A No.

* * *

(Testimony begins on 3/28/97; Transcript 5423)

(At 9:05 a.m. on March 28, 1997, in the United States District Court at Denver, Colorado, before the HONORABLE JOHN L. KANE, JR., U.S. District Judge, with Messrs. Chase and Wilson appearing as counsel for the plaintiffs, and Messrs. Bauer, Jentes, Munson, and Tully appearing as counsel for the defendants, the following proceedings were had:)

THE COURT: Mr. Tully, your objection is sustained.

MR. TULLY: Thank you.

MR. WILSON: Your Honor, could we make at least before we get into that, we'd like to be heard on that?

THE COURT: You can be.

MR. WILSON: Would you like to do that now or--

THE COURT: No, I think we'd better move on with the jury.

MR. WILSON: All right.

THE COURT: It's not going to happen right now; right?

MR. WILSON: No, sir.

THE COURT: Okay.

(Jury present.)

THE COURT: Go ahead, please.

MR. CHASE: Thank you, Your Honor.

You know, I noticed everybody smiling when they came in, because it's supposedly a half day. But what they didn't notice was we set the clock back. So we're going to make sure we get the full nine yards.

STEPHEN NG

having been previously sworn, resumed the witness stand and testified further as follows:

CROSS-EXAMINATION CONTINUES

BY MR. CHASE:

Q Mr. Ng, let's see if we can short circuit you today and finish you. Would you please look at Exhibit 1213?

A Right.

Q Do you have it?

A Yes, I do.

Q This is the July 15, 1993 memo from Mr. Fung to you.

THE CLERK: Just a minute, please.

MR. CHASE: Are we on?

THE COURT: Yes.

Q (by Mr. Chase) This is the July 15, 1993 memo from Mr. Fung to you transmitting a draft memorandum of understanding. Do you see that?

A Yes, I do.

Q Now, you never even looked at this document, did you?

A I didn't give a lot of time looking at this document. This was in the middle of our activities leading up to station opening. But I looked at the memorandum from Mr. Fung.

Q Mr. Ng, please look at your deposition, Volume 3.

THE CLERK: Volume 3 dated 21 June, 1995.

THE WITNESS: Thank you.

Q (by Mr. Chase) If you would look, please, at Page 634?

A Right.

Q And I'm going to start at Line 14.

A Okay.

Q All right. Now, these were the questions about this memo at that time, and your answers.

"Let me hand you a July 15, 1993 memo from Mr. Fung to you with an attached draft memorandum of understanding with United International Holdings."

"Thank you."

Question, "And ask you now if you recall seeing that?"

Answer, "This is Exhibit 2404?"

Question, "Exhibit 2404; correct."

Answer, "No, I'm afraid I do not recall receiving or seeing this memo from Mr. Fung."

"Do you deny having received this memo and draft from Mr. Fung?"

"No, I have no basis to deny."

Now, those were your answers to those questions at that time; right, Mr. Ng?

A Yes.

Q All right. Now--

MR. JENTES: I don't want to unduly prolong this, but could you please continue reading?

MR. CHASE: I'll be glad to. In fact, we'll read a lot about this then, I guess. Where do you want me to keep going? The next page?

MR. JENTES: It just seems to me where he's discussing how he did discuss the issues with Mr. Fung.

MR. CHASE: Well, I'll tell you what, Mr. Ng, I'll read what your counsel wants, and then I'll read you some more so that we can put this in the full context like you like to do.

Q (by Mr. Chase) If you look on at the next page, "Now, let me ask you if you'll look at the first page of Exhibit 2404, which is the transmittal? And the second sentence says, 'This most recent proposal represents UIH's adopted position following several rounds of negotiation with myself.' Do you see that?"

Answer, "Yes, I do."

Question, " Now, up to July 15, 1993, were you aware that UIH was involved in several rounds of negotiations with Mr. Fung on an MOU?"

Answer, I was generally aware that there were discussions between Mr. Fung and representatives of UIH about terms and conditions of UIH's possible investment in Wharf Cable, Limited, but I cannot recall the timing of those discussions. I cannot recall whether there were several

rounds of discussions, and whether or not there was a document called an MOU.

MR. CHASE: Do you want me to keep reading, Mr. Jentes?

MR. JENTES: No, that's fine.

MR. CHASE: Okay.

Q (by Mr. Chase) So you couldn't even recall whether there was a document called an MOU; right? That was your answer at the time?

A Yes.

Q Now, will you look, please, at Exhibit 1174?

A I'm on it.

Q 1174 is the May 28, 1993 weekly report to chairman from you to Mr. Woo; right?

A Yes.

Q And down at the bottom, this is the one that says, "Partnership discussions with UIH in suspension." Do you see that?

A Yes.

Q Now turn, if you will, please, to Exhibit 1186.

A Right.

Q That's the next week, June 4, 1993, weekly report to chairman. Do you see that?

A Yes.

Q And down at the bottom, it says, "Partnership discussions with UIH in suspension." Right?

A Yes.

Q Now turn, please, to Exhibit 1193, your weekly report to the chairman; right?

A Sorry, which one?

Q This is 1193, June 11, 1993, report to the chairman.

A No, it's an agenda for meeting with chairman.

Q Agenda for meeting with chairman. Okay. And then if you turn over to the second page, the weekly report, June 11, 1993, and look at the bottom, "Partnership discussions with UIH in suspension," do you see that?

A Yes.

Q Now, you testified on direct that you really should have said partnership decision with UIH in suspension. Do you remember that testimony?

A Yes.

Q All right. I'd like to have you look at the testimony you gave almost two years ago at your deposition, and we'll put it on the screen here for you.

A Which page is this, Mr. Chase?

Q This will be from Page 660, starting at Line 5, running to 663, Line 7.

(Whereupon, a portion of the deposition of Stephen Ng was played for the jury.)

Q (by Mr. Chase) Now, Mr. Ng, I'd like you to look over at Exhibit 1243, please. Exhibit 1243 is your August 11--Mr. Fung's August 11, 1993 memo from him to you. Do you remember testifying that on your direct examination?

A Yes.

Q All right. Now look, please, at Exhibit 683--I mean--Page 683 of your deposition. It's in Volume 3.

A Which line?

Q It's on Page 683, starting on Line 12, I asked you about this same document at your deposition.

A Okay.

Q Are you there?

A Yes.

Q Question, "Let me ask you to look at Exhibit 2065. This is a memo addressed to you from Mr. Fung dated August 11, 1993 entitled UIH Minority Investment in Cable Network Communications, Limited. This is a document you've seen before, is it not? "

Then your lawyer made an objection about, "I'll instruct you whatever document it is when you've had a chance to look at it. Respond, excluding from your answer any conversation that you and I have had, based on the attorney/client privilege, work product. Otherwise, you can go ahead and answer."

And then you did answer, and you said, "I do not remember seeing this document."

And then I asked you a further question, if you'll look up on 684, about what prompted this Document, Line 1. "Do you remember what prompted Mr. Fung to write this memo to you?"

Answer, "Not specifically."

Question, "Generally?"

Answer, "Generally, if given the notes of Wharf Communications coordination meeting minutes appear to say there was some activity at that time about UIH investments or proposed investments, I presume generally that was what motivated Mr. Fung in writing."

Now, do you remember giving those answers to those questions at your deposition?

A Yes.

Q Now, look, please, if you will, at Exhibit 1260.

MR. JENTES: Your Honor, I don't see that what he just read--first off, there was no question beforehand that this is supposedly impeaching to and, secondly, it's not inconsistent with anything that he testified to yesterday when I had him--I

guess it's the day before yesterday, when I had him on examination. So I don't think this is proper impeachment or use of the deposition.

MR. CHASE: Your Honor, this witness testified with respect to that memo and the next memo I'm about to show him, that he remembers it, he discussed it, went into it. The fact of the matter is, the deposition says the opposite.

THE COURT: The objection is overruled.

Q (by Mr. Chase) Look at Exhibit 1260, if you will, Mr. Ng, please. This is the September 1, 1993 memo from Mr. Fung to you, and you testified about that on direct examination, too, didn't you?

A Yes.

Q And you testified that you talked to Mr. Woo about both of these memos, didn't you?

A Yes.

Q All right. Now look at your deposition, Page 693, same volume.

A Okay, which line?

Q 693, Line 11.

A Okay.

Q Question, "Why don't you take a look at Exhibit 2067. This is a September 1, 1993 memo from Mr. Fung to you on strategic partnership considerations, and ask if you recall

receiving this. It also indicates that a copy of the August 11th memo is attached."

Answer, "August, meaning this?"

Question, "Meaning 2065."

Answer, "I do not remember seeing this."

Now look over at 694, please. 694, Line 19 where I asked you about a meeting with Mr. Woo to discuss these memos. I'm looking at 694, 19. "Do you recall discussing this September 1, 1993 memo with Mr. Woo?"

Answer, "I may have, but I don't recollect when and where."

"Do you remember telling Mr. Woo that you disagreed with any portion of the August 11 memo or the September 1,
'93 memo?"

Answer, "No, I don't remember any part of that discussion, if it took place. "

And look at 696, Line 3. Question, "What was your opinion in August and September of 1993? "

Answer, "I don't remember what my opinion was at that time."

Question, "Would you have passed along to Mr. Woo at that time memoranda that you deemed to be inaccurate "?

Answer, "It is possible that I would have done that. "

Question, "Well, why would you pass along to Mr. Woo memoranda that you deemed to be inaccurate? "

Answer, "My handwritten notes on the front page, Exhibit 2067, says for discussion, and it's quite possible that I just passed this memo along without any remarks until I get a chance to discuss with him. But I do not recall whether that was indeed the case."

Question, "And you don't recall discussing the September 1 or the August 11th memo with Mr. Woo "?

Answer, "I do not recall discussing the memos with Mr. Woo. "

Now, that was your testimony with respect to those memos at your deposition; right?

A Yes.

MR. JENTES: Mr. Chase, would you please read the portion that you jumped over, which I think begins on 695 at Line 3, and continues over to where you picked up again at the top--

MR. CHASE: I'll be glad to.

MR. JENTES: --of 696.

MR. CHASE: I'll be glad to. I'm going to go back to 695, Line 3, I'm talking about a memo that you just denied seeing.

Q (by Mr. Chase) Look over on the second page--

MR. JENTES: Wait a minute. All he said was he didn't recall seeing it.

MR. CHASE: I'm sorry. That's correct; that you hadn't recalled seeing.

Q (by Mr. Chase) "Look over on the second page of Exhibit 2067. That's the September 1 memo. I'm going to ask you about this sentence. In the first full paragraph, it says, 'In addressing considerations one and three, while UIH cannot be considered as a heavyweight in the development of new technologies and services, their parallel development in other international cable systems and their contacts within the dominant U.S. cable industry serves to provide Wharf with a useful strategic role should we desire to utilize it. These links were particularly helpful in Wharf Cable's formative stages when we relied heavily on UIH to act as a catalyst and reference for our procurement of technical design, resources, equipment and personnel.' Do you see that? "

Answer, "Yes, I do."

"Now, was it a true statement that you relied heavily in Wharf Cable's formative stages on UIH to act as a catalyst and reference for procurement of technical design, resources, equipment and personnel? "

Answer, "My view is this sentence substantially overstates the contribution that UIH made to the Wharf Cable project. "

Question, "That's your opinion today? "

Answer, "That is my opinion today. "

Do you want me to read any more?

MR. JENTES: No.

MR. CHASE: Thank you.

Q (by Mr. Chase) Now, Mr. Ng, how do we get out? Look, please, if you will, at Exhibit 1273.

A Yes.

Q Now, this was one that we have certainly seen before in this case, where you send the note to Mr. Fung on September 16, 1993, "Emil, didn't get very fair with chairman. More interested in a telecom partner. How do we get out? " And you testified on direct examination that you recalled that that meant how do we get out of this two party negotiation. Do you remember that?

A Yes.

Q Let's look at what you said at your deposition.

A Which page? I'm sorry.

Q Good question. That's going to be at 702, Line 18.

A 702? Line 18. I'm on it.

(Whereupon, a portion of the deposition of Stephen Ng was played for the jury.)

Q (by Mr. Chase) Those were your answers to those questions at the time of your deposition, Mr. Ng?

A Yes.

Q Turn, please, to Exhibit 1321.

A I'm on it.

Q Exhibit--

A I'm sorry. 1321?

Q Right. And this is in the jury book, the plaintiff's jury book, and the jurors may want to turn to this because we're going to play some video and you may need to follow the exhibit as we do.

This is Exhibit 1321. This is your November 24, 1993 bi-weekly meeting with the chairman; right?

A Yes.

Q And this is where you say, "UIH starts to back pedal."

A Yes.

Q And you testified on direct examination that you recall back pedal means back pedal from a two party relationship?

A I testified that this was a note that I took of the meeting, and when I circulated that to Mr. Woo, he disagreed that was something that was discussed or agreed at the meeting.

Q But you testified on direct examination that back pedal meant back pedal from the two party negotiation with UIH?

A Start to back pedal from a two party negotiation, two party partnership negotiation, and he disagreed and he said don't just start, stop.

Q Okay. I'll tell you what. Let's look at what you said at your deposition, and that will be at Page 763--no, I'm sorry--Page 764.

A 764?

Q 764, Line 25.

A I will need another book.

Q Okay. That will be Volume 4.

THE CLERK: Volume 4, 22 June 1995.

THE WITNESS: Thank you. 764?

Q (by Mr. Chase) Yes.

A Line?

Q 25.

A Thank you. I'm ready.

(Whereupon, a portion of the deposition of Stephen Ng was played for the jury.)

Q (by Mr. Chase) Now, those were your answers to those questions at your deposition, Mr. Ng, on that subject?

A Yes.

Q Now look, if you will, please, at Exhibit 1327. Exhibit 1327 is your December 9, 1993 memo to Mr. Woo regarding the dinner that you had in Los Angeles with the UIH representatives. Do you remember that?

A Yes.

Q And do you remember testifying about this memo, and particularly the points made on the second page about your discussion with Mr. Elsner and Mr. Schneider at that dinner?

A Yes.

Q And that's the dinner where you had encouraged them to activate TCA, but they were careful not to take the bait; right?

A That was the dinner.

Q All right. Now look, if you will, please, at your deposition, Page 769.

A Which line, please?

Q 769, Line 20.

A Line 20?

Q Yes.

A Okay.

Q I'm asking you about that dinner.

A Okay, I'm ready.

Q Question, "Let me ask you now if you can recall anything that you discussed with Mr. Elsner and Mr. Schneider at that dinner in Los Angeles? "

Answer, "No, I'm afraid I cannot." Do you see that?

A Yes.

Q And that was your testimony at that time about that dinner; right?

A Yes.

Q Now, I also asked you with respect to your memo here to Mr. Woo, where you again raise, "Told them about divided views on our board." Right?

A Yes.

Q And that's what you supposedly told Mr. Schneider and Mr. Elsner; right?

A Yes.

Q Look at your deposition, Page 770.

A And which line?

Q Line 15.

A Okay.

Q "As of December 1, 1993, were there divided views on your board with respect to a UIH investment in the Wharf Cable project?"

Answer, "I'm afraid I cannot remember." Do you see that?

A Yes.

Q That was your answer at that time; right?

A Yes.

Q And in the memo to Mr. Woo, you also talked again about this JLG issue, new T&T license still pending JLG approval. Do you see that?

A Yes.

Q And just so we can remind the jury, JLG is the joint liaison group to take care of the transition of Hong Kong going from British to Chinese rule?

A From British to Chinese sovereignty.

Q Okay, sovereignty. And you put in the memo here, you told the UIH people about the JLG issue. Look at Page 765, Line 9 of your deposition.

A Okay.

Q Question, "As of November, 1993, was there any issue with respect to whether the JLG would be a problem for UIH investment in the Wharf Cable project? "

Answer, "I cannot remember." That was your answer; right?

A Yes.

Q And then in this memo, you encouraged them to activate the TCA, but they were careful not to take the bait; right?

A That's what I wrote in the memo.

Q And you testified on direct examination here your interpretation as to what that means; right?

A Yes.

Q Well, we've seen this before, but we're going to see it one more time, Mr. Ng.

A Which page and which line, please?

Q We're going to show you Page 163, Line 3.

A That's in another book.

Q All right. 163 actually would be in Book 1.

Well, guess what? You're lucky, Mr. Ng. I think I finally killed the computer. It's not doing anything.

Well, I'll tell you what. I'll do this the old fashioned way. Page 163, Line 3.

A Right.

Q I guess we've seen it enough on television, maybe it will be refreshing to do it the old fashioned way.

Question, "What did you mean in your memo here, 'They were careful not to take the bait.'

Answer, "I don't remember."

Question, "In what way were you using the TCA as bait?"

Answer, "I don't remember."

Question, "Do you remember anything at all about why you wrote that sentence in Sentence 4 there?"

Answer, "Why I wrote it?"

Question, "What it means."

Answer, "It means what it says."

Question, "Why did you want UIH to activate the TCA at that time?"

Answer, "I don't remember."

Question, "Why hadn't the TCA been activated up to that time?"

Answer, "I don't remember."

Now, those were your answers to those questions at your deposition almost two years ago; right?

A Yes, in answer to your questions, and as you can see, the sequence is not exactly sequential. You're jumping from page to page.

Q All right, Mr. Ng, I'll tell you what. You've been through that deposition now several times, haven't you?

A Which deposition?

Q Your deposition, preparing for this trial, and your lawyers have been through it. Find me a page in your

deposition, sir, where it says anything different about what I just read to you about "take the bait."

A I'm sorry. I have not been through my deposition.

Q Well--

A I have not reread my deposition, certainly not in full.

Q All right, Mr. Ng, sitting here today, based on what you have read and based upon what you've had discussions with your lawyers about, and they're sitting here, too, somebody find me a page, a line, a sentence, a phrase in your deposition that I have unfairly deleted with respect to what it means, "take the bait."

A That was not my reference. My reference was I was shown documents in the deposition out of context and out of sequence. A moment ago, you were showing me Page 765, and now you're on Page 162. That's very clear.

Q Mr. Ng, at your deposition, we put these documents in front of you several times, sir, and we got your answers, did we not?

A Yes, you did.

Q Now, let's go to the first page of this Exhibit 1327. And the first page of Exhibit 1327 is where it says, "Attached note records my conversation with UIH last week. As you see, they are very persistent, but we will continue to try. In the end, we may need to consider a DEC kind of instrument with an equity kicker of sorts, probably along the lines of what Emil suggested at one time."

Do you remember that suggestion to your chairman?

A Yes.

Q Now, a DEC kind of instrument with an equity kicker of sorts is what Mr. Fung was recommending; right?

A At one point in time.

Q And you testified that you thought you would give UIH something under the TCA, but you weren't going to make this kind of recommendation, were you?

A I'm sorry, can you ask the question again?

Q I believe you testified on direct examination that when you were reading that language, "they are very persistent, but we will continue to try," that in your direct examination, you wanted to shift that over to try to get them to do something under the TCA. Do you remember that?

A Not precisely. I don't think that was precisely what I said.

Q The thing that you precisely said to your chairman, though, was, "We will continue to try, and we may have to consider a DEC kind of instrument with an equity kicker." Do you see that?

A That was my report to him.

Q Now, you never presented that to your board, did you?

A Presented what?

Q That suggestion to your board. Mr. Woo writes out in the side, "The board will have reservations." You never did present it to your board, did you?

A Present what suggestion? I was not making a suggestion.

Q A DEC kind of instrument with an equity kicker.

A I did not make that suggestion. Mr. Fung at one point in time made a suggestion, not a recommendation, a suggestion that was one kind of instrument that can be considered. I did not make that suggestion at all.

Q And neither you nor Mr. Woo took it to the board, did you?

A I don't believe we did.

Q Now look, if you will, please, at Exhibit 1333.

A 1333?

Q Exhibit 1333 is your December 14, 1993 meeting with the chairman, partnership strategy, UIH, others.

A Yes.

Q And that's where you have, "Stall." Do you see that?

A Yes, I do.

Q And on your direct examination, you testified that that referred to some of these satellite joint ventures UIH was talking about with respect to various things like pay-per-view. Do you remember that?

A Yes, I do.

Q All right. Please look at Page 772 of your deposition.

A Okay, which line?

Q 772, Line 25. And I asked you these questions and you gave these answers.

Question, "And then it appears to say, 'Stall.' Correct?"

Answer, "That appears to be the case."

Question, "What did you mean by that?"

Answer, "I don't remember writing that, and I don't remember what I meant by that." Do you see that?

A Yes.

Q And then you go on, "Do these handwritten comments by you reflect discussions you were having with Mr. Woo?"

Answer, "Not necessarily, and I can't remember whether they did."

Question, "What other explanation could there be for these handwritten comments?"

Answer, "I don't remember what these handwritten comments were." Do you see that?

A Yes.

Q And those were your answers to my questions almost two years ago; correct?

A Yes.

Q Now, let me shift gears on you here for a minute. I want to talk about board approval.

You have testified in various ways about hearing things from your board, talking to your board, getting certain answers from your board. Do you remember generally making those kind of references in your direct examination?

A Generally making those references? Yes, generally.

Q All right. Now, it's a fact, is it not, that prior to the March 18, 1994 meeting, you had no instance where the Wharf Holding directors, either formally or informally, discussed UIH; right?

A I am not sure the answer is right. I think the answer is wrong.

Q Look at Page 101 of your deposition, please.

A 101?

Q Yes.

A Right.

Q Okay, I've got it up on the screen here.

A Line?

Q Line 4, please. 101, Line 4.

A Thank you.

Q Question, "Other than the March 18, 1994 meeting among the various Wharf Holdings directors, can you recall

any instance where Wharf Holdings directors, whether formally or informally, discussed UIH?"

Answer, "I cannot remember."

Question, "And you can't recall any such discussions being reported to you?"

Answer, "No, I cannot recall." Do you see that?

A Yes.

Q That was your testimony under oath almost two years ago?

A That was my testimony in June, 1995.

Q Look, if you will, please, at Exhibit 1276. Exhibit 1276--

A Hang on, I'm not there yet.

Q Oh, I'm sorry.

A 1276?

Q Have you got it? It's going to be in the white books.

A Yeah, I've got it.

Q That's Mr. Mark Schneider's memo to you of September 27, 1993. "Hello from Denver." And then he goes, "I have also been asked several times in the past two weeks by Gene and Bill about the status of our MOU. As you will recall when we discussed this last month, we all agreed to finalize the documentation of our agreement by the

end of September. I understand from Emil that you have presented the deal to the Wharf board. Understandably, I am quite anxious to hear from you on the outcome of these discussions." Do you see that?

A Yes.

Q Now, as of that point in time, you hadn't presented anything to the Wharf board, had you?

A No, not the MOU--sorry, let me clarify. Not the MOU.

Q You hadn't presented anything about UIH to the Wharf board, had you?

A Not in that time frame. And let's be specific here.

Q Look at Exhibit 1308, please.

A 1308. Yes.

Q 1308 is a composite exhibit of some correspondence between you and Mr. Schneider over approximately a four day period starting November 9, 1993--actually, a shorter period--finishing up November 11, 1993. Do you see that in the book there?

A I am on Exhibit 1308.

Q All right. Now, if you look at the November 9th letter, which is the first one--

A Yes.

Q --it says, "My personal view is "--I'm looking down at the bottom of the first paragraph. I'm not going to read the whole letter. I'm just going to read that last sentence.

A Okay.

Q "My personal view is that such mention would, at present, be premature and we would need to work our way through the present round of discussions with our board before being able to present yourselves with clear confirmation." Do you see that?

A Yes.

Q Now, as of the time of that letter, there were no board discussions relating to UIH, were there?

A There were no full board discussions. But first of all, I need to clear--whatever board discussions that have to take place, I need to clear them with my chairman.

Q The point of the matter is, Mr. Ng, there were no board--

MR. JENTES: Excuse me, Mr. Chase. Could he finish his answer?

Q (by Mr. Chase) I'm sorry. I thought you were finished.

A No, I'm sorry. If my chairman would not agree with anything to be placed on the board agenda, then we can't get it to the board. The first thing to do was to clear it with the chairman, and this is the time when these discussions were taking place.

Q Mr. Ng, you never told that to UIH, did you?

A I never told what to UIH?

Q You told UIH that you were talking to your board about these things, didn't you?

A No, I said through the present round of discussions with our board, but you need to do things one step at a time; clear the chairman, if the chairman is happy to put it on the agenda, then it will be on the agenda for discussion with the board.

Q All right. Well, I guess we'll have to let this document speak for itself. Why don't you flip over to your November 11th document contained in the same grouping.

A Right. My letter to Mr. Schneider?

Q Your letter to Mr. Schneider, November 11, 1993, it's part of the same group of documents. And in the second paragraph, first full sentence, it says, "As I explained in my previous letter, we are presently in the process of a review with our board." Do you see that?

A Yes.

Q And that was false; right?

A No, we were preparing to review with the board. But until we had the information together, we can't go to the board. I can't go to the board and just say I'm negotiating something and stop there. What is it? Until we can put that together, there's nothing to go to the board.

Q You didn't tell Mr. Schneider that, did you?

A This is very normal board practice. Mr. Schneider is director on the UIH board. It's not something that I need to tell him. You put together something, you put together whatever is ready, and when it's ready, you put it to the board. When it's not ready, how do you go to the board?

Q Well, okay, I guess we'll let that letter speak for itself, too. I guess your answer is you didn't tell Mr. Schneider?

A I did not specifically tell Mr. Schneider.

Q Look, please, at Exhibit 1313.

A Yes.

Q Exhibit 1313 is a memo in Mr. Fung's handwriting, with your handwriting up in the upper right-hand side. Do you see that?

A Yes.

Q And this relates to the series of letters that we just looked at, Exhibit 1308, where Mr. Fung recommends--this is very poor quality for the screen, so I'll read it--"Our next move should be to claim that our directors got quite upset over these representations and have, therefore, instructed us to settle up on the TCA only. Publicly, we do not acknowledge the opportunity, and speak only to UIH's involvement vis-a-vis the TCA." Do you see that?

A Yes.

Q Do you remember receiving that note from Mr. Fung?

A Yes.

Q And up in the upper right-hand corner, you say to Mr. Fung, "Emil, please initiate." That's the starred portion of the document, and that's what I just read. "Please initiate." And then it says, and you correct me if I'm reading it wrong, "I expect to be," what's the next word?

A "Seeing."

Q "Seeing Elsner and Schneider," keep going for me.

A "At the Western Show."

Q "At the Western Show." Okay, you instructed Mr. Fung to go ahead and carry out the plan that's contained herein, our next move should be; right?

A What I instructed Mr. Fung to do was to settle up on the TCA, use the TCA as the vehicle to compensate UIH, which was in response to what Mr. Mark Schneider had suggested to us in one of his earlier letters.

Q So it's your testimony that that starred portion that's bracketing the entire paragraph here is an instruction to Mr. Fung to go settle up with UIH on the TCA?

A Yes.

Q Now, of course you know Mr. Fung never did any such thing, don't you?

A I don't know whether he did or not. I'm not in a position to answer that question.

Q You know, do you not, that Mr. Fung never took this subject up with UIH, did he?

A The subject of settling up on the TCA?

Q Correct.

A I don't know it as a fact, but if that's his testimony, I have no reason to deny it.

Q Why don't you look at Page 757 of your deposition, please, with respect to your instruction to Mr. Fung. I think that would be Volume 3--no, it would be Volume 4.

A It's right in front of me. 757?

Q 757. And first I'm going to read to you--I'm going to start at Line 2. 757, Line 2, and it's questions relating to this memo.

Question, "Did you have any understanding at the time of what he meant by, 'our next move should be'?"

Answer, "I cannot remember."

Question, "Did any of your directors get upset over the representations?"

Answer, "Sorry, I cannot remember."

Question, "Did any of your directors instruct you to settle up on the TCA only?"

Answer, "I cannot remember."

Question, "Did you discuss with Mr. Fung that publicly you would not acknowledge the opportunity, but speak only to UIH's involvement vis-a-vis the TCA?"

Answer, "I cannot remember whether I did that or not."

Question, "Did you discuss any of this material with Mr. Fung?"

Answer, "I cannot remember receiving this memorandum, and I cannot remember discussing any of this material with Mr. Fung."

Question, "Let's look up at your handwriting in the upper right where it says Emil, please initiate, and then it says, the asterisk there, do you see that?"

Answer, "Yes, I can see what you're referring to.

"And in the body of the memo, there's an asterisk before the phrase 'our next move should be. '

"Yes, I can see that sign, too."

"And did Mr. Fung, therefore, initiate and go forward with the recommendation contained in that paragraph that begins with 'our next move should be'?"

Answer, "That is not something I can remember."

Question, "Why were you instructing him to initiate the plan set forth in that paragraph?"

Answer, "I cannot remember instructing him to take any action of that kind."

Question, "What did you mean by please initiate, and then the star?"

Answer, "I cannot remember making that instruction."

Question, "Do you remember nothing about this?"
Answer, "No, not as I sit here today."

Now, those were your answers to those questions about that memo back in June, 1995; correct?

A Yes, when I was asked those questions in June, 1995.

Q Now, you testified a moment ago, and you testified on direct examination, regarding Mr. Schneider's November 5, 1993 letter to you and his transmittal of the draft memorandum of understanding. Do you remember that?

A Yes.

Q And on direct, you testified about this letter and the attached draft?

A Which exhibit is this?

Q I'm sorry. Exhibit 1305.

A 1305? Okay. And what was the question?

Q On direct examination, you testified about this letter and the attached draft, did you not?

A Yes.

Q And just a few moments ago, you tried to reference this by saying that Mr. Schneider himself had raised the issue of the TCA; right? Do you remember that testimony about five minutes ago?

A I was referencing a document, and let me take a look to see whether this was the document.

(Witness reviewing document.)

A I think it was this document.

Q This is the one that has the attached draft memorandum of understanding that contains the provision you were referring to about revising the TCA or getting paid. Is that the one you're referring to?

A Yes, I was referring to that a moment ago.

Q All right. Now, look at Page 653 of your deposition where I asked you about this same letter and attached memorandum two years ago.

A It's now 6--

Q 653.

A That's--

Q That's Volume 3.

A Okay, that's an earlier book. I've got it.

Q Got it?

A That's one of the earlier books. 653.

Q Right. You there?

A Not yet. 653. Line?

Q Line 1.

A Line 1, yes.

Q Question, "Do you recall discussing the November 5th letter and the draft transmittal with Mr. Fung at any time?"

Answer, "I cannot remember."

"Did you discuss the November 5th letter of the draft transmitted with it with Mr. Woo at any time?"

Answer, "I cannot remember."

Question, "Or with any member of the Wharf Holdings board of directors at any time?"

Answer, "No, I cannot remember."

"Or with any member of any Wharf board of directors at any time?"

Answer, "I cannot remember whether I did."

Question, "When you received this, did you read it?"

Answer, "I don't remember receiving it, and I don't remember reading it."

Now, that was your answers to those questions at that time about this document; right?

A That was my answer at the time of June, 1995 when my memory was vague.

Q And your memory has improved dramatically in two years time; right?

A Well, as I have explained a couple of days ago, this was a very busy time. A television station is a very large project. It is not like doing a school project. All of us have done school projects before. When there's a deadline, you make the project deadline, and thereafter, you're done.

Now, in this case, the project was to open the station. But once we were on the air, we have not stopped. So for three and a half years, we have not stopped for one single second. It is very different from a school project.

Q Are you done?

A And I have--

Q Oh, go ahead.

A As I was testifying a couple of days ago, the ability to be in Denver to concentrate on the case and to relive the experience looking at documents, listening to other witnesses testify, that's allowed me to relive the case.

Q Well, let's relive a little bit more of 1995 when it was two years earlier, and I asked you the questions under oath, and let's talk about the March 18, 1994 meeting. And that was the one where Mr. Elsner and Mr. Schneider showed up in Denver and met with some of your directors and they said no.

A I'm sorry, showed up in Denver?

Q I'm sorry, wrong, showed up in Hong Kong.

A Okay.

Q Okay? Do you remember the March 18, 1994 meeting?

A March 18, 1994? Yes, I do.

Q That's the one at the end of the line here.

A Yes.

Q Now, you testified on direct that you recalled the meeting, the recalled what Mr. Schneider did, you recalled what your board did. Do you remember that?

MR. JENTES: In fairness to the witness, what he said was he had a very general recollection of it, and he recited what he recalled in a general way.

Q (by Mr. Chase) Well, let's look at what you recalled two years ago when I asked you about that meeting. Look at your deposition, Page 95, Line 17. That would be Volume 1.

A Volume 1? So that would have been the beginning of the deposition; right?

Q That would have been 95 pages into it.

A Right. Page 95, Line?

Q Line 17.

A 17. Okay.

Q Okay, now, the questions were, "Now, at the meeting itself, first of all, UIH was present with some of these directors; correct?"

Answer, "I believe so."

Question, "How long did that portion last where the directors were meeting with UIH?"

Answer, "I don't remember."

Question, "Would it have been less than an hour?"

Answer, "I can't remember."

"Did there come a time when the UIH representatives left the meeting, and the Wharf representatives remained?"

Answer, "I can't remember, but that would be logical."

Question, "You just don't remember it happening?"

Answer, "No, I don't remember it happening."

Question, "So I suspect you don't remember how long the Wharf representatives would have remained?"

Answer, "No."

Question, "Do you remember anything that was said in the meeting by anyone?"

Answer, "No."

Question, "Do you remember whether you said anything in the meeting?"

Answer, "Not precisely. I'm sure I would have introduced the UIH people present at the meeting."

Question, "Sorry. Go ahead."

Answer, "But I don't remember what else I said "

Question, "Do you remember the UIH representatives being Mr. Elsner and Mr. Mark Schneider?"

Answer, "I do."

Question, "And other than introducing them, you don't recall anything else you said?"

Answer, "I don't recall whether I said anything else."

Question, "After they left, do you recall saying anything to just the Wharf representatives?"

Answer, "No, I don't."

Question, "Do you recall what Mr. Woo said during the meeting, or after the UIH representatives left?"

Answer, "No, I don't."

Question, "Do you recall what any of these people had to say at the meeting, any of these Wharf representatives?"

Answer, "No."

Question, "Do you remember what any of the UIH representatives said?"

Answer, "No, I don't."

Question, "Do you remember what resolution there came out of the meeting? Was there some decision that was made by the Wharf representatives?"

Answer, "I don't recall there was a resolution as such, especially given that it was in a formal board meeting, but I recall there was a general consensus."

Question, "Okay. Among the Wharf representatives?"

Answer, "That is correct."

Question, "What was the general consensus?"

Answer, "The general consensus was that if the Wharf board was asked to invite UIH to come to invest in 10 per cent of Wharf Cable as of that particular date, then the answer was, okay, we were not ready."

Question, "Okay. And who expressed that view? Do you remember?"

Answer, "I don't remember."

Question, "Now, you say if the board was asked, this group was not ready; correct?"

Answer, "Those directors who spoke or expressed an opinion."

Question, "And what were the reasons given as to why they weren't ready?"

Answer, "I don't recall."

Question, "You don't recall any of the reasons?"

Answer, "No, I don't."

Those were the answers that you gave to my questions about the March 18th meeting; right?

A Yes. But as you were reading it just now, I noticed maybe a typographical error. But I don't know whether it's important.

Q Fix it for us.

A It's Page 97, in the Lines 14, 15 and 16. It says, "I don't recall there was a resolution as such, especially given that it was in formal board meeting." It doesn't make sense to me. I think what I probably said was, "especially given that it was an informal board meeting."

Q Okay.

A I don't know whether it's relevant.

Q Any other changes you think should be made to that transcript?

A No, that's the only change.

Q All right.

MR. JENTES: Could you please continue reading on Page 98 at which you stop, and Line 11 and over to the first line on the top of Page 99, please?

MR. CHASE: Sure. We're going to read for a while here.

Q (by Mr. Chase) You get to rest. I read, Mr. Ng.

Question, "Do you recall reporting back to Mr. Schneider or Mr. Elsner this conclusion of this group of people?"

Answer, "I recall meeting with Mr. Mark Schneider and Mr. Bill Elsner later in the day to convey the opinion."

Question, "And do you remember what was said during that particular encounter?"

Answer, "I believe I said substantially what I just said, namely, that if the Wharf board was asked to invite UIH to invest in 10 per cent of Wharf Cable as of that date, the Wharf board would not have been ready."

Question, "And what was Mr. Schneider's reaction?"

Answer, "I don't think he was very happy."

Question, "And what did he say to you?"

Answer, "I don't remember what he said to me."

Question, "What was Mr. Elsner's reaction?"

Answer, "He wasn't very happy either."

Question, "Do you remember what he said to you?"

Answer, "I can't remember."

MR. CHASE: Do you want me to keep going?

MR. JENTES: No.

Q (by Mr. Chase) Anything else you want us to read, Mr. Ng, from that?

A No.

Q Okay. Now, as of the time of this meeting, Mr. Woo, you have testified, and so has he, did not want to have just one partner. He wanted two; right?

A Yes.

Q If at all?

A If at all.

Q If at all?

A Yes. Well, and a telecom partner.

Q Pardon me?

A And a telecom--not just any two partners.

Q I understand. You weren't going to go into Toys R Us or something like that; a telecom partner. Okay?

A Right. Yes.

Q And at the time UIH showed up there in March, 1994, you didn't have a telecom partner, did you?

A No, and Mr. Schneider didn't bring one either.

Q Well, Mr. Woo, at the time of that meeting, was in no way, shape or form going to agree with a UIH investment, was he?

A I'm sorry?

Q Mr. Woo had his mind made up before UIH showed up at that meeting, didn't he?

A Well, first of all, Mr. Woo had no idea what UIH was to bring. Remember when Mr. Woo met with Mr. Mark Schneider back in the early part of November, 1993, as far as Mr. Woo was concerned, he told Mr. Schneider that we were looking for a telecom partner in addition to, let's say, a cable partner. And Mr. Schneider agreed that he would go and try and find it for us as well. So until the meeting on March 18, 1994, until people sat down to listen to what Mr. Schneider had to say, nobody had any idea whether Mr. Schneider was bringing a telecom partner or not.

Q Mr. Ng, you mean it's your testimony that on March 18, 1994, you were all waiting to see if Mr. Schneider was going to bring you a telecom partner?

A We had no idea what Mr. Schneider would tell us at the March 18, 1994 meeting. And Mr. Woo was also expecting to see Mr. Gene Schneider at that meeting, as the information was communicated to us by UIH.

Q And you had dinner with Mr. Schneider the night before the meeting, didn't you?

A Yes, I did.

Q And, of course you knew he didn't have a telecom partner with him?

A By that time, yes, by late night--not late night--by the evening of 1994 March 17th.

Q And at no time prior to the meeting--at no time prior to the meeting had Mr. Schneider--

A Prior to which meeting?

Q The March 18 meeting, had Mr. Schneider told you, written to you, or in any way communicated to you that he had a telecom partner, and he was bringing a telecom partner?

A No, he did not. But I had no idea what he was going to tell me until I met him on March 17, 1994.

Q Mr. Ng, can you think of a single scrap of paper in this courtroom, in this case, anywhere, that would lead you to believe that UIH was bringing a telecom partner on March 18, 1994?

A No, but Mr. Schneider promised to look.

Q Okay. Now, Mr. Ng, look please, if you will, back at--we're going to talk about Mr. Fung's memoranda to you for a moment. Let me ask you to look, please, at Exhibit 1243. And this is Mr. Fung's August 11, 1993 memo to you.

A Yes.

Q That you've testified about in a couple of different ways. Do you see that?

A I see 1243, yes.

Q All right. Now, on the second page of this memo, Mr. Fung makes his recommendation.

A Right.

Q On August 11, 1993, he says, "Wharf Cable cannot underweigh the entrepreneurial value of the sweat equity contributed by UIH in our nascent beginning. We have a moral obligation to compensate UIH, if even just to avoid being branded corporately as being ungrateful. The nature of the compensation can take many forms, although it seems appropriate to enable UIH to benefit from a portion of the business upside." Do you see that?

A Yes.

Q And then he concludes by saying, "Recommend structuring a 10 per cent UIH investment as a blind financial play for UIH, coupled with the potential of strategic benefits for Wharf Cable." Do you see that?

A Yes.

Q That recommendation was rejected by Mr. Woo and by you, was it not?

A That recommendation was not accepted by the company.

Q And then if you look, please, at Mr. Fung's September 1, 1993 memo?

A Which exhibit is it?

Q I'm sorry, let me skip you over one. Look over at Exhibit 1293. This is his October 26, 1993 memo?

A Yes.

Q Let me get my copy of it. All right, October 26, 1993 memo, this is the memo we talked about yesterday where Mr. Fung has his chart of proposed strategic partners.

A Yes.

Q Right?

A Yes.

Q And then at the end of this memo, Mr. Fung talks about UIH--

A Which page is this?

Q I'm looking over three pages into the memo.

A Okay.

Q And I'm going to start reading from the bottom of this page. It starts with, "Such an arrangement." Do you see that?

A Okay.

Q And then it goes up on the next page. He says, "Such an arrangement was, in fact, contemplated in the technical assistance agreement, TCA." Maybe I should put this into better context. What he's talking about is another recommendation here about -- let me read the whole paragraph so we can really put this into context. Why don't you give me that highlighter?

THE COURT: Is this a good time to take a pit stop?

MR. CHASE: Sure.

THE COURT: Okay. It's not exactly a recess; more of a pit stop.

(10:21 a.m. - Jury excused.)

THE COURT: We'll be just about 10 minutes on this break.

(10:23 a.m. - Recess accordingly.)

(At 10:33 a.m. on March 28, 1997, with counsel for the parties present, the following proceedings were had:)

THE COURT: Thank you.

(10:35 a.m. - Jury present.)

THE COURT: Fire away.

CROSS-EXAMINATION BY MR. CHASE RESUMES:

Q Mr. Ng, before the break, I was let loose with my highlighter with respect to the October 26, 1993 memo from Mr. Fung to you, and I was calling your attention to his recommendation. To get his recommendation, you've got to start a little earlier than I had started. The bottom of the third page, do you have that in front of you?

A Yes.

Q "It would be difficult to argue that UIH did not incur at least opportunity costs in having assisted Wharf in the initiation of the cable project. However, as explained above, it is equally difficult to justify UIH as ranking in the league

of strategic partners. As a compromise, therefore, and in recognition of UIH's contributions, we should discuss with UIH how we may be able to work out a tactical partnership arrangement which primarily involves the exchange of financial consideration. Such an arrangement was, in fact, contemplated in the Technical Assistance Agreement, TCA, which was previously signed with UIH to lend credibility to our cable bid. Although the size of the financial considerations specified in the agreement may not be appropriate, given that UIH also contemplated being an investor in the cable project itself, it can certainly be structured such that the agreement is modified to include a financial instrument incorporating a modest element of financial upside. This financial upside may be specified in a manner such that UIH also bears on an indirect basis the economic risk of the project, but would for all intents and purposes, remain strictly as a financial investor."

Do you see that?

A Yes.

Q And, that proposal by Mr. Fung, was that incorporated into Exhibit 1300 where he got specific about a UIH investment participation right? Is that right?

A Yes.

Q And, that's the November 1, 1993 memo from Mr. Fung to you?

A Yes.

Q And, that's what you're referring to in Exhibit 1327, the memo from you to Mr. Woo where you say, "As you see, they are very persistent, but we will continue to try. In the

end, we may need to consider a debt kind of instrument with an equity kicker of sorts, probably along the lines of what Emil suggested at one time."

Do you see that?

A I see that.

Q And, the two things that we just looked at is what Emil had suggested; right?

A That is what Emil had suggested in writing. We may have had discussions along similar lines of structuring possibly a debt instrument, a junior debt instrument; what in our language is junior debt instrument. Namely, if there's a problem with a company, you stand at the back of the cue, rather than like banks that have security, you stand at the front of the cue. Some kind of debt instrument like that.

Q Okay. And, you discussed that among yourselves, but you never discussed it with UIH, did you?

A Well, we never got that far because we did not get Mr. Woo's agreement to proceed.

Q And, you never discussed Mr. Fung's proposal with UIH, did you?

A No, that was an internal proposal, and until it was internally cleared, there was nothing to take to UIH for discussion.

Q And, you didn't take any of this to your board, did you?

A No, we did not take it to the holdings board because at that time it was still very much something that was under

consideration at the management level. If the management had nothing to take to the board, there's nothing to take to the board.

MR. CHASE: Mr. Ng, I have no further questions. Thank you.

REDIRECT EXAMINATION

BY MR. JENTES:

Q A couple of quick questions. Mr. Ng, I'm not going to go over all of the lengthy two days of cross-examination here, but what Mr. Chase's examination in many respects boils down to is whether the jury ought to believe what your best recollection is now or whether they should believe what you said back a year and a half or so ago. Let me give just one example that he gave and ask you about it. That's the one I've put up on the screen here.

He read you from your testimony--this was at Page 101, first day of your testimony, and the question was,